

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-1042.01 Shelby Ross x4510

SENATE BILL 22-236

SENATE SPONSORSHIP

Hansen and Rankin, Zenzinger

HOUSE SPONSORSHIP

McCluskie and Ransom, Herod

Senate Committees
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE REVIEW OF MEDICAID PROVIDER RATES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Joint Budget Committee. Current law requires the department of health care policy and financing (state department) to establish a schedule for a review of provider rates paid under medicaid so that each provider rate is reviewed at least every 5 years and to provide the schedule to the joint budget committee (JBC). Beginning August 1, 2023, the bill requires the state department to establish a schedule so that each provider rate is reviewed at least every 3 years and to provide the schedule to the medicaid provider rate review advisory committee (advisory committee)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
2nd Reading Unamended
May 2, 2022

in addition to the JBC.

Current law authorizes the advisory committee or the JBC, by a majority vote, to direct the state department to conduct a review of a provider rate that is not scheduled for review during that year. Effective August 1, 2023, if the state department determines the request for an out-of-cycle review cannot be conducted, the bill requires the state department to provide written notification to the advisory committee and the JBC within 30 days after the request is made stating the reasons the out-of-cycle request cannot be conducted.

Effective August 1, 2023, the bill requires the state department to utilize information made available by the state department concerning the prior authorization process and billing structure for provider rates if such information is relevant to the review in order to minimize rate disparities for services in professional classifications that are eligible for reimbursement under medicaid.

Effective August 1, 2023, the bill requires the state department to conduct a public meeting at least quarterly to inform the state department's review of provider rates.

Current law requires the advisory committee consist of 24 members. Effective August 1, 2023, the bill decreases the advisory committee to 7 members and requires the members to have proven expertise related to medicaid in one or more specific areas. The advisory committee is currently scheduled to sunset September 1, 2025. The bill moves the sunset to September 1, 2036.

On or before December 1, 2024, and each December 1 thereafter, the bill requires the advisory committee to present to the JBC an overview of the provider rate review process, a summary of the provider rates that were reviewed, and the strategies for responding to the findings of the provider rate review.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend with**
3 **relocated provisions** 25.5-4-401.5 as follows:

4 **25.5-4-401.5. Review of provider rates - advisory committee**
5 **- recommendations - repeal.** (1) (a) On or before September 1, ~~2015~~
6 2023, the state department shall establish a schedule for an annual review
7 of provider rates paid under the "Colorado Medical Assistance Act" so
8 that each provider rate is reviewed at least every ~~five~~ THREE years and

1 shall provide the schedule to the ADVISORY COMMITTEE ESTABLISHED
2 PURSUANT TO SUBSECTION (3) OF THIS SECTION AND THE joint budget
3 committee. If the state department receives any petitions or proposals for
4 provider rates to be reviewed or adjusted, the state department ~~must~~
5 SHALL forward a copy of the petition or proposal to the advisory
6 committee AND THE JOINT BUDGET COMMITTEE.

7 (b) The state department shall review each of the provider rates
8 scheduled for review pursuant to the process described in this section.
9 ~~Additionally, The advisory committee established pursuant to subsection~~
10 ~~(3) of this section, by a majority vote, or the joint budget committee MAY,~~
11 ~~by a majority vote, may~~ direct that the state department conduct a review
12 of a provider rate that is not scheduled for review during that year. The
13 advisory committee or the joint budget committee shall notify the state
14 department OF THE REQUEST FOR AN OUT-OF-CYCLE REVIEW by December
15 1 of the year prior to the year in which the out-of-cycle review will take
16 place. ~~of the request for an out-of-cycle review.~~ IF THE STATE
17 DEPARTMENT DETERMINES THAT THE REQUEST FOR AN OUT-OF-CYCLE
18 REVIEW CANNOT BE CONDUCTED, THE STATE DEPARTMENT SHALL PROVIDE
19 WRITTEN NOTIFICATION TO THE ADVISORY COMMITTEE AND THE JOINT
20 BUDGET COMMITTEE WITHIN THIRTY DAYS AFTER THE REQUEST FOR AN
21 OUT-OF-CYCLE REVIEW. THE NOTIFICATION MUST INCLUDE A DESCRIPTION
22 OF THE REASONS THE OUT-OF-CYCLE REVIEW CANNOT BE CONDUCTED.

23 (c) (I) The state department may propose to exclude rates from the
24 schedule established pursuant to ~~paragraph (a) of this subsection (1)~~
25 SUBSECTION (1)(a) OF THIS SECTION if those rates are adjusted on a
26 periodic basis as a result of other state statute or federal law or regulation.
27 The state department shall include the proposed list of exclusions with the

1 schedule established pursuant to ~~paragraph (a) of this subsection (1)~~
2 SUBSECTION (1)(a) OF THIS SECTION.

3 (II) The advisory committee or the joint budget committee may,
4 by a majority vote, direct the state department to include any rate that the
5 state department has proposed to exclude from the schedule.

6 (2) (a) In the first phase of the review process, the state
7 department shall:

8 (I) Conduct an analysis of the access, service, quality, and
9 utilization of each service subject to a provider rate review. The state
10 department shall compare the rates paid with available benchmarks,
11 including medicare rates and usual and customary rates paid by private
12 pay parties, and use qualitative tools to assess whether payments are
13 sufficient to allow for provider retention and client access and to support
14 appropriate reimbursement of high-value services. ~~Notwithstanding the~~
15 ~~provisions of section 24-1-136 (11)(a)(I), on or before May 1, 2016, and~~
16 ~~each May 1 thereafter, the state department shall provide a report on the~~
17 ~~analysis required by this paragraph (a) to the advisory committee, the~~
18 ~~joint budget committee, and any stakeholder groups identified by the state~~
19 ~~department whose rates are reviewed.~~

20 (II) UTILIZE INFORMATION MADE AVAILABLE BY THE STATE
21 DEPARTMENT CONCERNING THE PRIOR AUTHORIZATION PROCESS AND
22 BILLING STRUCTURE FOR PROVIDER RATES IF SUCH INFORMATION IS
23 RELEVANT TO THE REVIEW PERFORMED PURSUANT TO SUBSECTION (1)(a)
24 OF THIS SECTION IN ORDER TO MINIMIZE RATE DISPARITIES FOR SERVICES
25 IN PROFESSIONAL CLASSIFICATIONS THAT ARE ELIGIBLE FOR
26 REIMBURSEMENT UNDER THE MEDICAL ASSISTANCE PROGRAM.

27 (b) Following the ~~report~~ ANALYSIS required by ~~paragraph (a) of~~

1 ~~this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION, the state
2 department shall work with the advisory committee and any stakeholders
3 identified by the state department OR THE ADVISORY COMMITTEE to review
4 the ~~report~~ ANALYSIS and develop strategies for responding to the findings,
5 including any nonfiscal approaches or rebalancing of rates AND
6 STRATEGIES TO ADDRESS CAPACITY ISSUES THAT MAY EXIST IN CERTAIN
7 REGIONS OF THE STATE.

8 (c) Following the review required by ~~paragraph (b) of this~~
9 ~~subsection (2)~~ SUBSECTION (2)(b) OF THIS SECTION, the state department
10 shall work with the office of state planning and budgeting to determine
11 achievable goals and executive branch priorities within the statewide
12 budget.

13 (d) (I) Notwithstanding ~~the provisions of~~ section 24-1-136
14 (11)(a)(I), on or before November 1, ~~2016~~ 2024, and each November 1
15 thereafter, the state department shall submit a written report to the joint
16 budget committee and the advisory committee ~~containing its~~ ON THE
17 ANALYSIS REQUIRED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION,
18 A DESCRIPTION OF THE INFORMATION DISCUSSED DURING THE QUARTERLY
19 PUBLIC MEETING CONDUCTED PURSUANT TO SUBSECTION (2)(e) OF THIS
20 SECTION, AND THE STATE DEPARTMENT'S recommendations on all of the
21 provider rates reviewed pursuant to this section and all of the data relied
22 upon by the state department in making ~~its~~ THE recommendations. The
23 joint budget committee shall consider the recommendations in
24 formulating the STATE DEPARTMENT'S budget. ~~for the state department.~~

25 (II) THE STATE DEPARTMENT SHALL SUBMIT, AS PART OF THE
26 REPORT REQUIRED PURSUANT TO THIS SUBSECTION (2)(d), A DESCRIPTION
27 OF THE INFORMATION DISCUSSED DURING THE QUARTERLY PUBLIC

1 MEETING; THE STATE DEPARTMENT'S RESPONSE TO THE PUBLIC COMMENTS
2 RECEIVED FROM PROVIDERS, RECIPIENTS, AND OTHER INTERESTED
3 PARTIES; AND AN EXPLANATION OF HOW THE PUBLIC COMMENTS INFORMED
4 THE PROVIDER RATE REVIEW PROCESS AND THE RECOMMENDATIONS
5 CONCERNING RATES AND PRIOR AUTHORIZATION REQUIREMENTS.

6 (e) THE STATE DEPARTMENT SHALL CONDUCT A PUBLIC MEETING
7 AT LEAST QUARTERLY TO INFORM THE STATE DEPARTMENT'S REVIEW OF
8 PROVIDER RATES PAID UNDER THE "COLORADO MEDICAL ASSISTANCE
9 ACT". THE STATE DEPARTMENT SHALL INVITE TO THE PUBLIC MEETING
10 PROVIDERS, RECIPIENTS, AND OTHER INTERESTED PARTIES DIRECTLY
11 AFFECTED BY THE SERVICES SCHEDULED TO BE REVIEWED AT THE PUBLIC
12 MEETING. AT A MINIMUM, EACH PUBLIC MEETING MUST CONSIST OF, BUT
13 IS NOT LIMITED TO:

14 (I) A DISCUSSION OF THE ANALYSIS AND REVIEW PERFORMED
15 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION; AND

16 (II) PUBLIC COMMENTS FROM PROVIDERS, RECIPIENTS, AND OTHER
17 INTERESTED PARTIES CONCERNING:

18 (A) THE ANALYSIS AND REVIEW PERFORMED PURSUANT TO
19 SUBSECTION (2)(a) OF THIS SECTION; AND

20 (B) RECOMMENDED CHANGES TO THE PROVIDER RATE REVIEW
21 PROCESS THAT MAY ENHANCE OR IMPROVE THE PROCESS.

22 (3) (a) There is created in the state department the medicaid
23 provider rate review advisory committee, referred to in this section as the
24 "advisory committee", to assist the state department in the review of the
25 provider rate reimbursements under the "Colorado Medical Assistance
26 Act". The advisory committee shall:

27 (I) Review the schedule for annual review of provider rates

1 established by the state department pursuant to ~~paragraph (a) of~~
2 ~~subsection (1)~~ SUBSECTION (1)(a) of this section and recommend any
3 changes to the schedule;

4 (II) Review the ANALYSIS PERFORMED PURSUANT TO SUBSECTION
5 (2)(a) OF THIS SECTION AND THE reports prepared by the state department
6 on its analysis of provider rates pursuant to ~~paragraph (a) of subsection~~
7 ~~(2)~~ SUBSECTION (2)(d) of this section and provide comments and feedback
8 to the state department AND THE JOINT BUDGET COMMITTEE on the reports;

9 (III) ~~With the state department, conduct public meetings to allow~~
10 ~~providers, recipients, and other interested parties an opportunity to~~
11 ~~comment on the report required by paragraph (a) of subsection (2)~~
12 REVIEW THE COMMENTS RECEIVED FROM PROVIDERS, RECIPIENTS, AND
13 OTHER INTERESTED PARTIES AND THE STATE DEPARTMENT'S RESPONSE TO
14 THE COMMENTS REQUIRED PURSUANT TO SUBSECTION (2)(d)(II) of this
15 section;

16 (IV) Review proposals or petitions RECEIVED BY THE ADVISORY
17 COMMITTEE for provider rates to be reviewed or adjusted; ~~received by the~~
18 ~~advisory committee;~~

19 (V) Determine whether any provider rates not scheduled for
20 review during the next calendar year should be reviewed during that
21 calendar year;

22 (VI) Recommend to the state department and to the joint budget
23 committee any changes to the process of reviewing provider rates,
24 including measures to increase access to the process, such as by providing
25 for electronic comments by providers and the public; and

26 (VII) Provide other assistance to the state department AND THE
27 JOINT BUDGET COMMITTEE as requested by the state department or the

1 joint budget committee.

2 (b) (I) The advisory committee consists of the following
3 ~~twenty-four~~ SEVEN members:

4 (A) THREE MEMBERS APPOINTED BY THE GOVERNOR;

5 (B) TWO MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE,
6 OR THE PRESIDENT'S DESIGNEE; AND

7 (C) TWO MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF
8 REPRESENTATIVES, OR THE SPEAKER'S DESIGNEE.

9 (II) EACH MEMBER APPOINTED TO THE ADVISORY COMMITTEE
10 MUST HAVE PROVEN EXPERTISE RELATED TO THE MEDICAL ASSISTANCE
11 PROGRAM IN ONE OR MORE OF THE FOLLOWING AREAS:

12 (A) SERVICE DELIVERY OR CASE MANAGEMENT SERVICES
13 PROVIDED TO ONE OR MORE ELIGIBLE POPULATIONS;

14 (B) PROVIDER FINANCE OR BUDGET;

15 (C) SERVICE CAPACITY ANALYSIS;

16 (D) BUSINESS PROCESSES;

17 (E) CLAIMS FILING OR PROCESSING; OR

18 (F) IMPLEMENTATION OF STATE AND FEDERAL MEDICAID RULES,
19 REGULATIONS, AND GUIDANCE.

20 (III) THE STATE DEPARTMENT MAY MAKE RECOMMENDATIONS TO
21 THE GOVERNOR, THE PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE
22 HOUSE OF REPRESENTATIVES CONCERNING THE QUALIFICATIONS OF
23 MEMBERS APPOINTED TO THE ADVISORY COMMITTEE.

24 ~~(I) The following members appointed by the president of the~~
25 ~~senate:~~

26 ~~(A) A recipient with a disability or a representative of recipients~~
27 ~~with a disability;~~

1 ~~(B) A representative of hospitals providing services to recipients~~
2 ~~recommended by a statewide association of hospitals;~~

3 ~~(C) A representative of providers of transportation;~~

4 ~~(D) A representative of rural health centers;~~

5 ~~(E) A representative of home health providers recommended by~~
6 ~~a statewide organization of home health providers; and~~

7 ~~(F) A representative of providers of durable medical equipment~~
8 ~~recommended by a statewide association of durable medical equipment~~
9 ~~providers;~~

10 ~~(H) The following members appointed by the minority leader of~~
11 ~~the senate:~~

12 ~~(A) A representative of providers of behavioral health-care~~
13 ~~services;~~

14 ~~(B) A representative of primary care physicians who see recipients~~
15 ~~recommended by a statewide association of primary care physicians;~~

16 ~~(C) A representative of dentists providing services to recipients~~
17 ~~recommended by a statewide association of dentists;~~

18 ~~(D) A representative of federally qualified health centers;~~

19 ~~(E) A representative of nonmedical home- and community-based~~
20 ~~service providers; and~~

21 ~~(F) A representative of providers serving recipients with~~
22 ~~intellectual and developmental disabilities;~~

23 ~~(H) The following members appointed by the speaker of the~~
24 ~~house of representatives:~~

25 ~~(A) A representative of child recipients with a disability;~~

26 ~~(B) A representative of specialty care physicians not employed by~~
27 ~~a hospital who see recipients recommended by a statewide association~~

1 whose members include at least one-third of the doctors of medicine or
2 osteopathy licensed by the state;

3 ~~(C) A representative of providers of alternative care facilities~~
4 ~~recommended by a statewide association of alternative care facilities;~~

5 ~~(D) *[Editor's note: This version of subsection (3)(b)(III)(D) is*~~
6 ~~*effective until July 1, 2024.]* A representative of single entry point~~
7 ~~agencies;~~

8 ~~(D) *[Editor's note: This version of subsection (3)(b)(III)(D) is*~~
9 ~~*effective July 1, 2024.]* A representative of case management agencies;~~

10 ~~(E) A representative of ambulatory surgical centers;~~

11 ~~(F) A representative of hospice providers recommended by a~~
12 ~~statewide association of hospice and palliative care providers; and~~

13 ~~(IV) The following members appointed by the minority leader of~~
14 ~~the house of representatives:~~

15 ~~(A) A representative of substance use disorder providers~~
16 ~~recommended by a statewide association of substance use disorder~~
17 ~~providers;~~

18 ~~(B) A representative of facility-based physicians who see~~
19 ~~recipients. For purposes of this sub-subparagraph (B), "facility-based~~
20 ~~physicians" include anesthesiologists, emergency room physicians,~~
21 ~~neonatologists, pathologists, and radiologists.~~

22 ~~(C) A representative of pharmacists providing services to~~
23 ~~recipients;~~

24 ~~(D) A representative of managed care health plans;~~

25 ~~(E) A representative of advanced practice nurses recommended~~
26 ~~by a statewide association of nurses; and~~

27 ~~(F) A representative of physical therapists or occupational~~

1 ~~therapists recommended by a statewide association representing~~
2 ~~occupational or physical therapists.~~

3 (c) The appointing authorities shall make ~~their~~ initial
4 appointments to the advisory committee no later than ~~August 1, 2015~~
5 AUGUST 1, 2023. In making appointments to the advisory committee, the
6 appointing authorities shall make a concerted effort to include members
7 of diverse political, racial, cultural, income, and ability groups and
8 members from urban and rural areas.

9 (d) Each member of the advisory committee serves at the pleasure
10 of the official who appointed the member. Each member of the advisory
11 committee serves a four-year term and may be reappointed.

12 (e) The members of the advisory committee serve without
13 compensation and without reimbursement for expenses.

14 (f) At the first meeting of the advisory committee, to be held on
15 or after September 1, ~~2015~~ 2023, the members shall elect a chair and
16 vice-chair from among the members.

17 (g) The advisory committee shall meet at least once every quarter.
18 The chair may call ~~such~~ additional meetings as may be necessary for the
19 advisory committee to complete its duties.

20 (h) The advisory committee shall develop bylaws and procedures
21 to govern its operations.

22 (i) ON OR BEFORE DECEMBER 1, 2023, AND EACH DECEMBER 1
23 THEREAFTER, THE ADVISORY COMMITTEE SHALL PRESENT TO THE JOINT
24 BUDGET COMMITTEE AN OVERVIEW OF THE PROVIDER RATE REVIEW
25 PROCESS, A SUMMARY OF THE PROVIDER RATES THAT WERE REVIEWED,
26 AND THE STRATEGIES FOR RESPONDING TO THE FINDINGS OF THE PROVIDER
27 RATE REVIEW, INCLUDING ANY FISCAL OR NONFISCAL APPROACHES OR

1 REBALANCING OF RATES, ANY ADVISORY COMMITTEE RECOMMENDATIONS
2 FOR RATE ADJUSTMENTS MADE TO THE STATE DEPARTMENT, AND ANY
3 RECOMMENDATIONS FOR IMPROVING CAPACITY AND ACCESS TO SERVICES
4 IN REGIONS OF THE STATE WHERE REDUCED CAPACITY RESULTS IN LIMITED
5 ACCESS TO SERVICES.

6 (†) (j) (I) This subsection (3) is repealed, effective September 1,
7 2025 2034.

8 (II) Prior to repeal, the department of regulatory agencies shall
9 conduct a sunset review of the advisory committee pursuant to the
10 provisions of section 2-3-1203. ~~C.R.S.~~

11 **SECTION 2.** In Colorado Revised Statutes, 2-3-1203, **repeal**
12 (16)(a)(I); and **add** (23) as follows:

13 **2-3-1203. Sunset review of advisory committees - legislative**
14 **declaration - definition - repeal.** (16) (a) The following statutory
15 authorizations for the designated advisory committees will repeal on
16 September 1, 2025:

17 (I) ~~The medicaid provider rate review advisory committee created~~
18 ~~in section 25.5-4-401.5, C.R.S.;~~

19 (23) (a) THE FOLLOWING STATUTORY AUTHORIZATIONS FOR THE
20 DESIGNATED ADVISORY COMMITTEES WILL REPEAL ON SEPTEMBER 1,
21 2034:

22 (I) THE MEDICAID PROVIDER RATE REVIEW ADVISORY COMMITTEE
23 CREATED IN SECTION 25.5-4-401.5;

24 (b) THIS SUBSECTION (23) IS REPEALED, EFFECTIVE SEPTEMBER 1,
25 2036.

26 **SECTION 3. Act subject to petition - effective date.** This act
27 takes effect August 1, 2023; except that, if a referendum petition is filed

1 pursuant to section 1 (3) of article V of the state constitution against this
2 act or an item, section, or part of this act within the ninety-day period
3 after final adjournment of the general assembly, then the act will not take
4 effect unless approved by the people at the general election to be held in
5 November 2022 and, in such case, will take effect August 1, 2023, or on
6 the date of the official declaration of the vote thereon by the governor,
7 whichever is later.