

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0975.01 Jerry Barry x4341

HOUSE BILL 23-1295

HOUSE SPONSORSHIP

Bird and Bockenfeld, Sirota

SENATE SPONSORSHIP

Zenzinger and Kirkmeyer, Bridges

House Committees
Appropriations

Senate Committees

A BILL FOR AN ACT

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

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. The bill makes the following changes to the reviews and audits of the payments by the department of health care policy and financing (department) to providers:

- The department shall review and audit underpayments and overpayments to providers;

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

- If the department determines that an overpayment occurred because services could have been provided at a lower cost setting, the overpayment is the difference between the amount paid and the amount due if the services had been provided under other circumstances;
- Any overpayment review evaluating medical necessity must be conducted by a Colorado physician relying only on the information available at the time of treatment;
- The department shall not declare the existence of an overpayment until providers have exhausted all administrative and judicial remedies;
- If the department determines that there has been an underpayment, the department shall pay the provider the amount due because of the underpayment, plus interest;
- Reimbursement for covered services, including amounts collected for an overpayment, must be in an amount adequate to ensure access to care;
- Audits and reviews must not occur more than 3 years after the date the claim was filed;
- Notices of adverse action that fail to comply with department rules are void;
- In an appeal of a determination of overpayment or underpayment, an administrative law judge's ruling must be published on the department's website and other administrative law judges may rely on previous rulings as precedent;
- The department shall annually identify billing errors common across multiple providers to enable providers to correct the errors;
- The department may contract with a qualified agent to review or audit payments to providers for both overpayments and underpayments and must protect against conflicts of interest;
- In any contingency-based contract for review or audit of payments, the compensation must not exceed 12.5% of the amount of overpayments collected and the amount due because of underpayments determined;
- At least quarterly, the 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 and a copy of the contracts, scopes of work, and information regarding supervision of contractor deliverables for audits and reviews;
- The department shall create a provider advisory group to

- advise the department on issues that providers have concerning the audits and reviews; and
- The department shall contract for an independent review of reviews and audits conducted from the 2018-19 to the 2022-23 state fiscal years for compliance with coding practice standards and state law.

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

2 **SECTION 1.** In Colorado Revised Statutes, 25.5-4-301, add
3 (3)(a)(IX), (3.5)(c), and (3.7) as follows:

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

7 (IX) FOR AUDITS CONDUCTED PURSUANT TO 42 CFR 455.508, AT
8 LEAST QUARTERLY, THE STATE DEPARTMENT SHALL PUBLISH ON ITS
9 WEBSITE AN AUDIT ACTIVITY REPORT DETAILING CURRENT AND RECENTLY
10 COMPLETED AUDITS AND REVIEWS AND SUMMARIES OF THE FINDINGS OF
11 SUCH AUDITS AND REVIEWS, INCLUDING THE NUMBER AND AMOUNTS OF
12 OVERPAYMENTS AND UNDERPAYMENTS FOUND, THE NUMBER AND
13 RESULTS OF APPEALS, THE AMOUNTS COLLECTED, AND THE ERROR RATES
14 IDENTIFIED. AT LEAST QUARTERLY, THE STATE DEPARTMENT SHALL
15 CONDUCT TRAININGS FOR PROVIDERS AND HOLD STAKEHOLDER MEETINGS
16 REGARDING AUDITS AND REVIEWS. IN ADDITION, WHEN THE STATE
17 DEPARTMENT ENTERS INTO CONTRACTS PURSUANT TO THIS SUBSECTION
18 (3)(a), THE STATE DEPARTMENT SHALL PUBLISH ON ITS WEBSITE A COPY OF
19 THE CONTRACT, SCOPE OF WORK, AND INFORMATION REGARDING
20 SUPERVISION OF CONTRACTOR DELIVERABLES.

21 (3.5) (c) THE STATE DEPARTMENT SHALL CREATE A PROVIDER
22 ADVISORY GROUP FOR RECOVERY AUDITS CONSISTING OF EMPLOYEES OF

1 THE STATE DEPARTMENT AND MEMBERS FROM DIFFERENT PROVIDER
2 GROUPS, INCLUDING PHYSICIANS, HOSPITALS, AND ANY OTHER PROVIDER
3 TYPES DIRECTLY IMPACTED BY AUDITS CONDUCTED PURSUANT TO THIS
4 SECTION, APPOINTED BY THE EXECUTIVE DIRECTOR. THE PROVIDER
5 ADVISORY GROUP SHALL MEET AT LEAST QUARTERLY TO REVIEW
6 QUARTERLY ACTIVITY REPORTS REQUIRED BY SUBSECTION (3)(a)(IX) OF
7 THIS SECTION AND ADVISE THE STATE DEPARTMENT ON ISSUES PROVIDERS
8 EXPERIENCE WITH THE AUDITS AND REVIEWS CONDUCTED PURSUANT TO
9 SUBSECTION (3) OF THIS SECTION.

10 (3.7) (a) DURING THE 2023-24 STATE FISCAL YEAR, THE OFFICE OF
11 THE STATE AUDITOR SHALL CONDUCT AN INDEPENDENT REVIEW OF THE
12 STATE DEPARTMENT'S RECOVERY AUDIT CONTRACTOR PROGRAM
13 PURSUANT TO 42 CAR 455.508 FOR COMPLIANCE WITH REQUIREMENTS OF
14 THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES MEDICAID
15 RECOVERY AUDIT PROGRAM, COMPLIANCE WITH CODING PRACTICE
16 STANDARDS, AND STATE LAW. TO THE EXTENT POSSIBLE, THE AUDIT SHALL
17 EXAMINE AND ISSUE POLICY RECOMMENDATIONS TO THE JOINT BUDGET
18 COMMITTEE OF THE GENERAL ASSEMBLY, THE HEALTH AND HUMAN
19 SERVICES COMMITTEE OF THE SENATE, AND THE PUBLIC AND BEHAVIORAL
20 HEALTH AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF
21 REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES, REGARDING:

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

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

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

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

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

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

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

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

26 (A) THE NUMBER, PROPORTION, AND VALUE OF CLAIMS REVIEWED,
27 RELATIVE TO TOTAL POTENTIAL CLAIMS SUBJECT TO THE RECOVERY AUDIT

1 CONTRACTOR PROGRAM;

2 (B) THE NUMBER AND PROPORTION OF PROVIDERS IMPACTED BY

3 CLAIM REVIEWS AND CONTESTED PAYMENTS;

4 (C) THE NUMBER, PROPORTION, AND VALUE OF CONTESTED

5 PAYMENTS, INCLUDING UNDERPAYMENTS, OVERPAYMENTS, AND

6 RECOUPMENTS; AND

7 (D) THE NUMBER, PROPORTION, VALUE, AND RESULT OF

8 CONTESTED PAYMENTS BY DISPOSITION STATUS, INCLUDING THOSE

9 RESOLVED THROUGH INTERVIEW REQUESTS PURSUANT TO SECTION

10 25.5-4-301(3)(a)(IV.5), INFORMAL RECONSIDERATIONS, AND APPEALS.

11 (V) PROVIDER ADMINISTRATIVE BURDENS ASSOCIATED WITH THE

12 RECOVERY AUDIT CONTRACTOR PROGRAM;

13 (VI) THE FEASIBILITY OF INCENTIVES FOR UNDERPAYMENT

14 IDENTIFICATION, INCLUDING MODELS FROM OTHER STATES AND METHODS

15 FOR IDENTIFYING UNDERPAYMENTS;

16 (VII) THE IMPACT OF AUDITS ON PROVIDER PARTICIPATION AND

17 ACCESS TO CARE, AND OPPORTUNITIES TO INCREASE MEANINGFUL

18 PROVIDER PARTICIPATION AND ACCESS TO CARE; AND

19 (VIII) AN ASSESSMENT OF THE DUPLICATION OF UTILIZATION

20 MANAGEMENT REVIEWS AND APPROVALS, SUCH AS PRIOR AUTHORIZATION,

21 WITH POST-PAYMENT AND AUDIT REVIEWS.

22 (b) THE OFFICE OF THE STATE AUDITOR SHALL CONTRACT WITH AN

23 ENTITY THAT REVIEWS STATE PLANS AND AMENDMENTS SUBMITTED TO

24 THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES ON

25 BEHALF OF STATES FOR THE ENTITY TO ASSESS FEDERAL FLEXIBILITIES

26 PURSUANT TO 42 CFR 455.516 THAT COLORADO CAN UTILIZE IN ORDER TO

27 IMPROVE THE RECOVERY AUDIT CONTRACTOR PROGRAM AND ASSIST IN

1 PURSUING THOSE FLEXIBILITIES, WHEN ALREADY AUTHORIZED. THE
2 CONTRACTED ENTITY MUST NOT BE A CONTRACTOR UNDER THE RECOVERY
3 AUDIT CONTRACTOR PROGRAM, NOR A COMPETITOR OF SUCH A
4 CONTRACTOR, NOR A PROVIDER OF SIMILAR PROGRAM INTEGRITY
5 PRODUCTS.

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

7 **SECTION 2. Appropriation.** For the 2023-24 state fiscal year,
8 \$850,000 is appropriated to the legislative department for use by the
9 office of the state auditor. This appropriation is from the general fund. To
10 implement this act, the office may use this appropriation for an
11 independent review of the department of health care policy and
12 financing's recovery audit contractor program and contract services to
13 improve the recovery audit contractor program.

14 **SECTION 3. Appropriation.** (1) For the 2023-24 state fiscal
15 year, \$39,287 is appropriated to the department of health care policy and
16 financing for use by the executive director's office. This appropriation is
17 from the general fund. To implement this act, the office may use this
18 appropriation as follows:

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

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

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

1 amount of federal funds to be used as follows:

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

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

4 **SECTION 4. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, or safety.