

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

**REVISED**

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

LLS NO. 23-0975.01 Jerry Barry x4341

**HOUSE BILL 23-1295**

---

**HOUSE SPONSORSHIP**

**Bird and Bockenfeld,** Sirota, Amabile, Bradfield, Bradley, Brown, Hamrick, Ricks, Snyder, Soper, Young

**SENATE SPONSORSHIP**

**Zenzinger and Kirkmeyer,** Bridges

---

**House Committees**  
Appropriations

**Senate Committees**  
Appropriations

---

**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.

SENATE  
Amended 2nd Reading  
May 3, 2023

HOUSE  
3rd Reading Unamended  
May 1, 2023

HOUSE  
Amended 2nd Reading  
April 29, 2023

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

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

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

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

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

21 (e) It is the policy of this state to promote payments to medicaid  
22 providers that are adequate to ensure access to care and consistent with

1 42 U.S.C. sec. 1396a (a)(30)(A); and

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

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

11 **25.5-4-301. Recoveries - overpayments - penalties - interest -**  
12 **adjustments - liens - review or audit procedures - repeal.** (3) (a) A  
13 review or audit of a provider is subject to the following procedures:

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

1 (3.5) (c) THE STATE DEPARTMENT SHALL CREATE A PROVIDER  
2 ADVISORY GROUP FOR RECOVERY AUDITS CONSISTING OF EMPLOYEES OF  
3 THE STATE DEPARTMENT AND MEMBERS FROM DIFFERENT PROVIDER  
4 GROUPS, INCLUDING PHYSICIANS, HOSPITALS, AND ANY OTHER PROVIDER  
5 TYPES DIRECTLY IMPACTED BY AUDITS CONDUCTED PURSUANT TO THIS  
6 SECTION, APPOINTED BY THE EXECUTIVE DIRECTOR. THE PROVIDER  
7 ADVISORY GROUP SHALL MEET AT LEAST QUARTERLY TO REVIEW  
8 QUARTERLY ACTIVITY REPORTS REQUIRED BY SUBSECTION (3)(a)(IX) OF  
9 THIS SECTION AND ADVISE THE STATE DEPARTMENT ON ISSUES PROVIDERS  
10 EXPERIENCE WITH AUDITS OF THE RECOVERY AUDIT CONTRACTORS  
11 PROGRAM.

12 (3.7) (a) DURING THE 2023-24 STATE FISCAL YEAR, THE OFFICE OF  
13 THE STATE AUDITOR SHALL CONDUCT AN INDEPENDENT REVIEW OF THE  
14 STATE DEPARTMENT'S RECOVERY AUDIT CONTRACTOR PROGRAM  
15 PURSUANT TO 42 CFR 455.506 FOR COMPLIANCE WITH REQUIREMENTS OF  
16 THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES MEDICAID  
17 RECOVERY AUDIT PROGRAM, COMPLIANCE WITH CODING PRACTICE  
18 STANDARDS, AND STATE LAW. TO THE EXTENT POSSIBLE, THE AUDIT SHALL  
19 EXAMINE AND ISSUE POLICY RECOMMENDATIONS TO THE JOINT BUDGET  
20 COMMITTEE OF THE GENERAL ASSEMBLY, THE HEALTH AND HUMAN  
21 SERVICES COMMITTEE OF THE SENATE, AND THE PUBLIC AND BEHAVIORAL  
22 HEALTH AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF  
23 REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES, REGARDING:

24 (I) THE EFFECTIVENESS AND LEVEL OF THE PAYMENT MODEL USED  
25 FOR THE STATE DEPARTMENT'S RECOVERY AUDIT CONTRACTOR,  
26 INCLUDING THE LEVEL OF PAYMENTS SUFFICIENT TO MAINTAIN A  
27 CONTRACTOR, THE SCOPE OF THE CONTRACT AND DELIVERABLES, AND

1 IMPACTS ON PROVIDERS RELATED TO A CONTINGENCY FEE-BASED SYSTEM  
2 SIGNIFICANTLY ABOVE THE FEDERAL STANDARD;

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

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

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

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

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

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

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

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

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

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

9 (D) THE NUMBER, PROPORTION, VALUE, AND RESULT OF  
10 CONTESTED PAYMENTS BY DISPOSITION STATUS, INCLUDING THOSE  
11 RESOLVED THROUGH INTERVIEW REQUESTS PURSUANT TO SECTION  
12 25.5-4-301(3)(a)(IV.5), INFORMAL RECONSIDERATIONS, AND APPEALS.

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

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

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

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

24 (b) (I) THE OFFICE OF THE STATE AUDITOR SHALL CONTRACT WITH  
25 AN ENTITY THAT REVIEWS STATE PLANS AND AMENDMENTS SUBMITTED TO  
26 THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES ON  
27 BEHALF OF STATES FOR THE ENTITY TO ASSESS FEDERAL FLEXIBILITIES

1 PURSUANT TO 42 CFR 455.516 THAT COLORADO CAN UTILIZE IN ORDER TO  
2 IMPROVE THE RECOVERY AUDIT CONTRACTOR PROGRAM AND ASSIST IN  
3 PURSUING THOSE FLEXIBILITIES, WHEN ALREADY AUTHORIZED. THE  
4 CONTRACTED ENTITY MUST NOT BE A CONTRACTOR UNDER THE RECOVERY  
5 AUDIT CONTRACTOR PROGRAM, NOR A COMPETITOR OF SUCH A  
6 CONTRACTOR, NOR A PROVIDER OF SIMILAR PROGRAM INTEGRITY  
7 PRODUCTS.

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

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

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

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

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

27 (E) WHAT ARE OTHER STATES' BEST PRACTICES IN EXERCISING

1 FEDERAL FLEXIBILITIES IN THE RECOVERY AUDIT CONTRACTOR PROGRAM  
2 TO IMPROVE PROVIDER EDUCATION, TRAINING, AND ERROR RATES?

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

4 **SECTION 3. Appropriation.** For the 2023-24 state fiscal year,  
5 \$850,000 is appropriated to the legislative department for use by the  
6 office of the state auditor. This appropriation is from the general fund. To  
7 implement this act, the office may use this appropriation for an  
8 independent review of the department of health care policy and  
9 financing's recovery audit contractor program and contract services to  
10 improve the recovery audit contractor program.

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

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

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

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

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

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

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