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Fiscal Note

Drafting Number: LLS 23-0975 Date: April 25, 2023
Prime Sponsors: Rep. Bird; Bockenfeld Bill Status: House Appropriations
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Bill Topic: AUDITS OF HCPF PAYMENTS TO PROVIDERS

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill makes changes to reviews and audits of payments to providers by the Department of Health Care Policy and Financing and associated processes to recover overpayments or reimburse providers for underpayments. The bill increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$52.1 million to multiple state agencies

Fiscal Note Status: The fiscal note reflects the introduced bill. Due to time constraints, this analysis is preliminary and will be updated following further review and any additional information received.

Table 1
State Fiscal Impacts Under HB 23-1295

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Cash Funds, Federal Funds, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

The bill makes several changes to reviews and audits of payments to providers by the Department of Health Care Policy and Financing (HCPF) and associated processes to recover overpayments or reimburse providers for underpayments. Specifically, the bill:

- limits overpayment recoveries to the difference between the amount paid and the maximum amount HCPF would have paid for the service under any circumstance;
- requires that overpayment determinations around medical necessity be conducted by a Colorado licensed physician and requires that the determination rely only the information available at the time of the treatment;
- prohibits HCPF from declaring an overpayment until providers have exhausted all administrative and judicial remedies;
- requires that overpayment collection does not interfere with access to care;
- requires HCPF to pay interest when reimbursing a provider for an underpayment of a claim;
- limits audits to claims within the last three years (reduced from seven years), including audits in the process of receiving an extension from the federal government;
- waives HCPF's right to recover overpayment if the provider is not notified of the adverse action or a reconsideration denial within established timeframes.

Additionally, the bill:

- places disclosure requirements on HCPF;
- adds conflict of interest restrictions on contracted auditors;
- limits contracts for auditors that pay based on the amount of recoveries, such that compensation does not exceed 12.5 percent of overpayments recovered;
- requires HCPF to create a provider advisory group to receive feedback on the audit process; and
- requires HCPF to hire a contractor to conduct a review of all audits from July 2018 to June 2023 and produce a report for the General Assembly.

Background

As required by state and federal law, HCPF currently contracts with a recovery audit contractor to review provider claims. These post-payment reviews of provider-submitted claims paid by Medicaid determine whether services were actually provided, medically necessary, coded correctly, and properly paid or denied, as well as whether another party should be responsible for payment. Providers who submit claims to Medicaid are required to maintain adequate documentations and records of the services provided, and to provide documentation to HCPF, its contractor, or the federal government upon request. Under current law, claims may be reviewed up to seven years after the date services were provided. If it is determined that the amount paid to the provider was too high, was not medically necessary, should have been paid by another party, or something similar, HCPF will seek to recover the overpayment from the provider. Over the last several years, recoveries have increased rapidly. In FY 2021-22, HCPF received about \$34 million in recovery payments. Through March of the current fiscal year, HCPF has collected about \$50 million in recoveries, expected to reach \$75 million by the end of the year.

State Expenditures

The bill increases state expenditures in the Department of Health Care Policy and Financing (HCPF) by \$52.1 million in FY 2023-24 and \$46.8 million in FY 2024-25, paid from the General Fund, the Healthcare Affordability and Sustainability Cash Fund, and federal funds. A portion of these costs will be paid to the Department of Personnel and Administration (DPA) for review of claims in the administrative court and to the Department of Law for legal services, paid using reappropriated funds from HCPF. Expenditures are shown in Table 2 and detailed below.

**Table 2
 Expenditures Under HB 23-1295**

	FY 2023-24	FY 2024-25
Department of Health Care Policy and Financing		
Personal Services	\$1,563,287	\$1,705,404
Operating Expenses	\$29,700	\$29,700
Capital Outlay Costs	\$146,740	-
Legal Services	\$786,177	\$786,177
Physician Review	\$6,075,000	\$6,075,000
Independent Audit Review	\$5,375,000	-
Reduced Overpayment Recoveries	\$37,500,000	\$37,500,000
Underpayment Recovery Interest	-	\$40,000
Employee Insurance and Supplemental Retirement ¹	\$368,470	\$402,769
FTE – Personal Services	20.1 FTE	22.0 FTE
FTE – Legal Services	4.1 FTE	4.1 FTE
HCPF Subtotal	\$51,844,374	\$46,539,050
Department of Personnel and Administration²		
Personal Services	\$206,935	\$206,935
Operating Expenses	\$2,835	\$2,835
Capital Outlay Costs	\$13,340	-
Employee Insurance and Supplemental Retirement ¹	\$42,527	\$42,528
FTE – Personal Services	2.1 FTE	2.1 FTE
DPA Subtotal	\$265,637	\$252,298
Total	\$52,110,011	\$46,791,347
Total FTE	26.3 FTE	28.2 FTE

¹ Costs for employee insurance and supplemental retirement are included in the bill's appropriation since the bill requires over 20 FTE.

² Costs in the DPA are paid using reappropriated funds from HCPF.

Department of Health Care Policy and Financing

Staffing. HCPF requires 22.0 FTE to conduct audits on the condensed timeline and implement the other policy changes required by the bill. Conducting audits on the condensed timeline is expected to roughly double the workload of the current audit staff, resulting in the need for an additional 20 FTE. The other 2.0 FTE will be responsible for ensuring the other requirements of the bill are implemented, including the reporting requirements. Standard operating and capital outlay costs are included. These costs are prorated to account for the General Fund pay date shift.

Legal services. Currently, overpayment notices are appealed at a rate of 5 percent. The bill creates several incentives to appeal overpayment notices, most significantly through the provision that HCPF not declare an overpayment until providers have exhausted all administrative and judicial remedies. Thus this fiscal note assumes that the appeal rate will double, resulting in the need for an additional 7,500 hours of legal services, the equivalent of 4.1 FTE, at a cost of about \$800,000 per year. Legal services are provided by the Department of Law at a rate of \$105.74 per hour. This also increases costs for administrative law judge review, paid to the Office of Administrative Courts in the Department of Personnel and Administration; costs in the DPA are described below.

Physician review. HCPF is required to contract with a licensed physician to review overpayment determinations that involve questions of medical necessity. Approximately 100,000 such determinations were made last year. It is assumed that this work will be performed by contracted physicians. Assuming each claim requires 15 minutes of review at a cost of \$225 per hour, this physician review will increase costs by \$6.0 million per year.

Independent audit review. HCPF is required to hire a contractor to conduct a review of all audits from July 2018 to June 2023. Given that the contractor will need to review approximately 1,000 audits. It is assumed that over 90 percent of the contractor's time will be spent on the most complex audits that consist of several more claims than the average audit and are estimated to cost around \$25,000 per audit. In total, the review is expected to increase costs by \$5.4 million in FY 2023-24 only.

Reduced overpayment recoveries. HCPF is projected to collect \$75 million in overpayments annually. The bill limits audits to claims within the last three years, changed from seven years. Given how frequently overpayments are forfeited under the current seven-year timeline due to circumstances not entirely within HCPF's control, the three-year timeline is expected to result in HCPF forfeiting an additional 50 percent of overpayment recoveries resulting in a loss of \$37.5 million annually. It is assumed that the federal government will conduct audits to discover all overpayments not discovered by the state audit. Thus this reduction in overpayment collections will be borne entirely by state funds.

Underpayment recovery interest. HCPF pays about \$500,000 in underpayments annually. The bill requires HCPF to pay interest on underpayment recoveries, regardless of who is at fault for the underpayment. If the underpayment rate remains constant and given current interest rates, this will cost \$40,000 annually beginning in FY 2024-25. However, the underpayment levels may increase as this policy creates an incentive for providers to submit claims improperly.

Federal audits. Federal law requires HCPF to return federal funds to CMS within one year of identifying an overpayment. The bill may delay recoveries and result in HCPF making inaccurate payments to CMS, if required to before the recovery process is complete. This could increase workload and costs to respond to a federal audit.

Department of Personnel and Administration

The bill prohibits HCPF from declaring an overpayment until providers have exhausted all administrative and judicial remedies. Presuming the technical issue with this requirement is resolved (see Technical Note), other provisions of the bill will require the Office of Administrative Courts in the DPA to hear double the number of allegations of overpayment determination cases. Assuming 20 hours per case, this will result in the need for 2.1 FTE. This is subject to change as other provisions of the bill affect the number of overpayment determinations but that impact cannot be calculated at this time. Standard operating and capital outlay costs are included.

Employee Insurance and Supplemental Retirement

Pursuant to fiscal note and Joint Budget Committee policy, centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill, rather than through the annual budget process. These costs, which include employee insurance and supplemental employee retirement payments for HCPF, are shown in Table 2.

Technical Note

Overpayment declarations. The bill prohibits HCPF from declaring an overpayment until providers have exhausted all administrative and judicial remedies. Under federal audit requirements, appeal procedures are triggered by such a declaration. This fiscal note assumes that this will be remedied and HCPF will continue to be able to seek and collect overpayment recoveries.

Contract procurement. The bill limits compensation under contingency based audit contracts to no more than 12.5 percent of the amount of overpayments recovered. This limitation may prevent HCPF from paying a competitive market rate for these services and result in it being unable to procure a contractor, which may further impact overpayment recoveries and result in additional procurement costs. This technical note notwithstanding, the fiscal note assumes that HCPF will be able to procure a contractor.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$52,110,011 and 20.1 FTE to HCPF. Of this amount, \$42,930,006 is from the General Fund, \$1,875,000 is from the Healthcare Affordability and Sustainability Cash Fund, and \$7,305,006 is from federal funds. From this amount, the following reappropriation of funds are required:

- \$265,637 to the Department of Personnel and Administration with an additional 2.1 FTE; and
- \$786,177 to the Department of Law with an additional 4.1 FTE.

Departmental Difference

The DPA estimates that it will need 13.1 FTE to implement the bill, resulting in costs of \$1,663,084 in FY 2023-24 and \$1,576,374 annually thereafter. This is based on the assumption that the bill's requirement that all judicial remedies be exhausted before an overpayment determination is issued will result in the Office of Administrative Courts in the DPA hearing each allegation of overpayment. As discussed in the Technical Note, the fiscal note assumes that this provision is a technical issue that will be resolved and that the bill will result in a doubling of the determination challenges relative to current law.

State and Local Government Contacts

Health Care Policy and Financing
Human Services

Personnel and Administration
Law