

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

INTRODUCED

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.**

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;
- If the department determines that an overpayment occurred

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.*

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, **amend**
3 (2) introductory portion, (3)(a)(II), (3)(a)(VI), (3)(a)(VIII), (3)(b)
4 introductory portion, and (3)(b)(I); and **add** (2)(a)(III), (2)(a)(IV),
5 (2)(a)(V), (2)(a)(VI), (2)(a)(VII), (2)(a)(VIII), (2)(a)(IX), (3)(a)(IX),
6 (3)(b)(VI), (3.5)(c), and (3.5)(d) as follows:

7 **25.5-4-301. Recoveries - overpayments and underpayments -**
8 **penalties - interest - adjustments - liens - review or audit procedures**
9 **- repeal.** (2) Any overpayment OR UNDERPAYMENT to a provider,
10 including those of personal needs funds made pursuant to section
11 25.5-6-206, are recoverable regardless of whether the overpayment OR
12 UNDERPAYMENT is the result of an error by the state department, a county
13 department of human or social services, an entity acting on behalf of
14 either department, or by the provider or any agent of the provider as
15 follows:

16 (a) (III) IF THE STATE DEPARTMENT MAKES A DETERMINATION
17 PURSUANT TO SUBSECTION (2)(a)(I) OR (2)(a)(II) OF THIS SECTION THAT
18 AN OVERPAYMENT HAS BEEN MADE FOR A COVERED SERVICE, THE STATE
19 DEPARTMENT SHALL NOT DEMAND FULL REPAYMENT OF THE
20 OVERPAYMENT, AND THE AMOUNT OF THE REPAYMENT IS LIMITED TO THE
21 DIFFERENCE BETWEEN THE AMOUNT PAID AND THE AMOUNT THE STATE
22 DEPARTMENT WOULD HAVE PAID FOR THE COVERED SERVICE UNDER
23 OTHER CIRCUMSTANCES, SUCH AS A DIFFERENT CODE, LOCATION, OR

1 OTHER COVERAGE CRITERIA.

2 (IV) ANY OVERPAYMENT REVIEW EVALUATING MEDICAL
3 NECESSITY MUST BE CONDUCTED BY A PHYSICIAN LICENSED TO PRACTICE
4 IN THIS STATE IN ACCORDANCE WITH 42 CFR 455.508(b), AND IN
5 DETERMINING MEDICAL NECESSITY, ONLY INFORMATION AVAILABLE TO
6 THE TREATING PHYSICIAN AT THE TIME OF TREATMENT MAY BE USED TO
7 MAKE THE DETERMINATION.

8 (V) THE STATE DEPARTMENT SHALL NOT DECLARE THE EXISTENCE
9 OF AN OVERPAYMENT PURSUANT TO SUBSECTION (2)(a)(I) OR (2)(a)(II) OF
10 THIS SECTION UNTIL PROVIDERS HAVE EXHAUSTED ALL ADMINISTRATIVE
11 AND JUDICIAL REMEDIES.

12 (VI) IF THE STATE DEPARTMENT MAKES A DETERMINATION THAT
13 AN UNDERPAYMENT HAS BEEN MADE, THE STATE DEPARTMENT SHALL PAY
14 TO THE PROVIDER THE AMOUNT DUE BECAUSE OF THE UNDERPAYMENT,
15 PLUS INTEREST ACCRUING AT THE STATUTORY RATE FROM THE DATE THAT
16 THE STATE DEPARTMENT MAKES THE DETERMINATION.

17 (VII) REIMBURSEMENT FOR COVERED SERVICES, INCLUDING
18 AMOUNTS COLLECTED FOR AN OVERPAYMENT, MUST BE REIMBURSED AT
19 AN AMOUNT ADEQUATE TO ENSURE ACCESS TO CARE, IN ACCORDANCE
20 WITH 42 U.S.C. SEC. 1396a (a)(30)(A).

21 (VIII) CONSISTENT WITH 42 CFR 455.508(f), AUDITS AND
22 REVIEWS CONDUCTED PURSUANT TO THIS SECTION MUST NOT REVIEW
23 CLAIMS THAT ARE FROM MORE THAN THREE YEARS AFTER THE DATE THE
24 CLAIM WAS FILED. THE STATE DEPARTMENT SHALL RESCIND ANY PREVIOUS
25 REQUESTS TO THE FEDERAL GOVERNMENT TO ALLOW AN AUDIT
26 CONDUCTED PURSUANT TO THIS SECTION TO BE CONDUCTED BEYOND A
27 THREE-YEAR PERIOD.

1 (IX) ANY NOTICE OF ADVERSE ACTION THAT HAS PREVIOUSLY
2 FAILED OR LATER FAILS TO COMPLY WITH THE SIXTY-DAY DEADLINE SET
3 FORTH IN 42 CFR 455.508, OR ANY INFORMAL RECONSIDERATION DENIAL
4 THAT HAS PREVIOUSLY FAILED OR LATER FAILS TO COMPLY WITH THE
5 FORTY-FIVE DAY DEADLINE SET FORTH IN SECTION 25.5-4-301, IS VOID. IN
6 SUCH CASES, THE STATE DEPARTMENT WAIVES ANY RIGHT TO RECOVER AN
7 OVERPAYMENT.

8 (3) (a) A review or audit of a provider is subject to the following
9 procedures:

10 (II) The reviewer or auditor shall apply uniform standards and
11 procedures to each class of providers subject to a review or an audit to
12 determine an overpayment OR UNDERPAYMENT.

13 (VI) Whenever possible, the reviewer or auditor shall base a
14 determination of an overpayment OR UNDERPAYMENT to a provider upon
15 a review of actual records of the department, its agents, or the provider.
16 In the event sufficient records are not available to the reviewer or auditor,
17 an overpayment OR UNDERPAYMENT determination may be based upon a
18 sampling of records so long as the sampling and any extrapolation
19 therefrom is reasonably valid from a statistical standpoint and is in
20 accordance with generally accepted auditing standards.

21 (VIII) In accordance with ~~paragraph (c) of subsection (2)~~
22 SUBSECTION (2)(c) of this section, any provider adversely affected by the
23 actions of the state department or its contracting agent in connection with
24 a review or an audit, including whether the state department or its
25 contracting agent adhered to the provisions of this subsection (3) in
26 making an overpayment OR UNDERPAYMENT determination, may appeal
27 such actions pursuant to the provisions of section 24-4-105. ~~C.R.S.~~ IF AN

1 APPEAL PURSUANT TO THIS SUBSECTION (3)(a)(VIII) IS HEARD BY AN
2 ADMINISTRATIVE LAW JUDGE FROM THE OFFICE OF ADMINISTRATIVE
3 COURTS, THE STATE DEPARTMENT SHALL PUBLISH ON ITS WEBSITE THE
4 JUDGE'S FINAL RULING AND OTHER ADMINISTRATIVE LAW JUDGES MAY
5 RELY ON THE PRIOR DECISIONS AS PRECEDENT.

6 (IX) AT THE END OF ANY REVIEW OR AUDIT, BUT NOT LESS THAN
7 ANNUALLY, THE STATE DEPARTMENT SHALL IDENTIFY BILLING ERRORS
8 COMMON ACROSS MULTIPLE PROVIDERS AND, FOR AT LEAST THE TEN MOST
9 COMMON ERRORS IDENTIFIED, PUBLISH ON ITS WEBSITE GUIDANCE THAT
10 ENABLES PROVIDERS TO CORRECT THE BILLING ERRORS.

11 (b) The state department is authorized to engage the services of a
12 qualified agent through a competitive contract issued pursuant to the
13 state's procurement code for the purpose of conducting a review or audit
14 of a provider to assist in determining whether there has been an
15 overpayment OR UNDERPAYMENT to a provider and the amount of that
16 overpayment OR UNDERPAYMENT. In addition to such terms and
17 conditions as the state department may deem necessary, any contract ~~shall~~
18 ~~be~~ MUST PROTECT AGAINST CONFLICTS OF INTEREST ARISING FROM
19 COMMON OWNERSHIP OR CONTROL OF OTHER FUNCTIONS CONDUCTED BY
20 THE STATE DEPARTMENT OR ITS AGENTS AND IS subject to the
21 requirements for conducting a review or an audit in accordance with
22 ~~paragraph (a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS SECTION.
23 The state department is further authorized to enter into a contract with a
24 qualified agent for the purpose of conducting a review or an audit of a
25 provider that provides that the compensation of the contracting agent ~~shall~~
26 MUST be contingent and based upon a percentage of the amount of the
27 recovery OF THE OVERPAYMENT collected from the provider AND THE

1 UNDERPAYMENT DUE TO A PROVIDER. A contract issued by the state
2 department for the purpose of conducting a review or an audit of a
3 provider to determine whether the provider has received an overpayment
4 ~~shall also be~~ OR UNDERPAYMENT IS subject to the following conditions:

5 (I) (A) The compensation paid to the contracting agent under a
6 contingency-based contract ~~shall~~ MUST not exceed ~~eighteen~~ TWELVE AND
7 ONE-HALF percent of the amount finally collected from the provider FOR
8 THE overpayment OR THE AMOUNT DUE TO THE PROVIDER FOR AN
9 UNDERPAYMENT, and the state department may establish a limit on the
10 amount of annual compensation that may be paid to a contracting agent
11 under a contingency-based contract and may further establish a limit on
12 the amount that may be paid to a contracting agent under a
13 contingency-based contract for recovery from any one provider.

14 (B) WITHIN THIRTY DAYS AFTER THE END OF ANY AGREEMENT
15 WITH A CONTRACTING AGENT IN EFFECT AS OF THE EFFECTIVE DATE OF
16 THIS SUBSECTION (3)(b)(I)(B), THE STATE DEPARTMENT SHALL RESCIND
17 ANY PREVIOUS REQUESTS TO THE FEDERAL GOVERNMENT ALLOWING FOR
18 CONTINGENCY PAYMENTS TO EXCEED TWELVE AND ONE-HALF PERCENT.

19 (VI) AT LEAST QUARTERLY, THE STATE DEPARTMENT SHALL
20 PUBLISH ON ITS WEBSITE AN AUDIT ACTIVITY REPORT DETAILING CURRENT
21 AND RECENTLY COMPLETED AUDITS AND REVIEWS AND SUMMARIES OF THE
22 FINDINGS OF SUCH AUDITS AND REVIEWS, INCLUDING THE NUMBER AND
23 AMOUNTS OF OVERPAYMENTS AND UNDERPAYMENTS FOUND, THE NUMBER
24 AND RESULTS OF APPEALS, AND THE AMOUNTS COLLECTED. IN ADDITION,
25 WHEN THE STATE DEPARTMENT ENTERS INTO CONTRACTS PURSUANT TO
26 THIS SUBSECTION (3)(b), THE STATE DEPARTMENT SHALL PUBLISH ON ITS
27 WEBSITE A COPY OF THE CONTRACT, SCOPE OF WORK, AND INFORMATION

1 REGARDING SUPERVISION OF CONTRACTOR DELIVERABLES.

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

13 (d) (I) DURING THE 2023-24 STATE FISCAL YEAR, THE STATE
14 DEPARTMENT SHALL CONTRACT FOR AN INDEPENDENT REVIEW OF ALL
15 AUDITS CONDUCTED FROM THE 2018-19 TO THE 2022-23 STATE FISCAL
16 YEARS FOR COMPLIANCE WITH CODING PRACTICE STANDARDS AND STATE
17 LAW. THE ENTITY AWARDED THE CONTRACT PURSUANT TO THIS
18 SUBSECTION (3.5)(d)(I) MUST NOT BE A QUALIFIED AGENT PURSUANT TO
19 SUBSECTION (3)(b) OF THIS SECTION. THE REVIEW MUST INCLUDE A
20 REPORT TO THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE
21 SENATE AND THE PUBLIC AND BEHAVIORAL HEALTH AND HUMAN SERVICES
22 COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR
23 COMMITTEES.

24 (II) THIS SUBSECTION (3.5)(d) IS REPEALED, EFFECTIVE JULY 1,
25 2025.

26 **SECTION 2. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, or safety.