

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted 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, Buckner, Cutter, Hansen, Priola

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
3rd Reading Unamended
May 4, 2023

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.