GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill #	HB0237	**Title:**	Providing requirements for Medicaid overpayment audits
Primary Sponsor:	Olszewski, Albert	**Status:**	As Amended

- ☐ Significant Local Gov Impact
- ☑ Needs to be included in HB 2
- ☑ Technical Concerns
- ☐ Included in the Executive Budget
- ☐ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2016 Difference	FY 2017 Difference	FY 2018 Difference	FY 2019 Difference
Expenditures:				
General Fund	$107,014	$105,577	$106,635	$107,710
Federal Special Revenue	$37,014	$35,577	$36,635	$37,710
Revenue:				
General Fund	$0	$0	$0	$0
Federal Special Revenue	$37,014	$35,577	$36,635	$37,710
Net Impact-General Fund Balance:	($107,014)	($105,577)	($106,635)	($107,710)

Description of fiscal impact: This bill provides standards and requirements for Medicaid overpayment audits and prohibits the use of certain standard auditing sampling methodologies. Medicaid over payment audits are currently performed under three federally required audits, the Recovery Audit Contract, the Payment Error Rate Measurement Audit, and the Surveillance and Utilization Review audit. Additional operational costs to meet the provisions of this bill would be necessary, including 1.00 additional FTE.

FISCAL ANALYSIS

Assumptions:

1. Medicaid overpayment audits are currently performed by both department and contracted audit staff. It is assumed for purposes of this fiscal note, the provisions of this bill are assumed to apply to audit and review

functions across the department including Surveillance and Utilization Review Section (SURS), and claims reviews conducted by division program staff and contracted audit staff.

2. The maximum number of records assumed to be reviewed each year are 200, and 150 providers or cases will be reviewed as identified from all audit functions performed by the department or its contractors.
3. New Section 2(2) requires the auditor to reimburse the provider for the cost of providing the records. The cost per page of a record is assumed to be $0.10, and provider staff time to make the copies is assumed to be eight hours at $15.00 per hour. It is estimated that 25% of cases will result in non-electronic records submitted to the department or contractor. Total estimated cost to be reimbursed to providers by the auditor is $5,320. It is assumed that this cost would be passed on to the department by the auditor.
   a) 150 providers x .25 = 38 x 200 records = 7,600
   b) 7,600 x $0.10 = $760
   c) Eight hours x $15 = $120
   d) $120 x 38 providers = $4,560
   e) $760 + $4,560 = $5,320
4. New Section 4 requires that any overpayment finding must be reviewed by a peer before an overpayment determination may be issued.
   a) For purposes of this fiscal note it is assumed the numbers of types of providers are those provider types maintained in the Medicaid Management Information System (MMIS). It is estimated that the total number of claims lines to be reviewed each year is 7,600. The latest Payment Error Rate Measurement for a completed audit year is FFY 2011 and is 2.7%. Using this percentage the total number of claims lines identified as overpayment and subject to peer review is 205 (7,600 lines x .027).
   b) It is estimated it would take a professional peer five minutes per line or 17 hours to review the records (205 claims lines x 5 minutes = 1,025 minutes / 60 minutes = 17 hours).
   c) Assuming a professional peer is paid an average of $250 per hour the estimate cost for a professional peer review of all overpayment findings would be $4,273. It is assumed that the department would be responsible for payment for the professional peer review.
5. Section 10(7) requires the department or an auditor to provide training to providers at least twice a year.
   a) Whenever possible the department would try to bundle this training with various provider conferences and association functions. The cost of a venue to conduct the training is estimated to be $1,500 per day.
   b) It is assumed that these trainings would be conducted at various venues around the state and that staff would be required to travel for these trainings. The estimated cost for travel for staff would be $396 for two trainings per year.
      i) Travel days are estimated to be three days with two nights in a hotel at $75 per night
      ii) 2 nights x $75 = $150 x two trainings = $300
      iii) $48 per diem x two trainings = $96
   c) It is estimated that materials to be provided at these trainings would be $800 per training.
   d) Total estimated cost for these trainings is $4,996 per year
      i) Venue - $3,000
      ii) Travel - $396
      iii) Materials - $1,600
   e) If a contracted auditor were to conduct the training, it is assumed that staff time would still be required, and that the auditor would pass their cost back to the department. The estimated cost for a contracted auditors time is estimated to be $150 per hour and would be for two days, including travel time, per training for a total estimated cost of $4,800.
6. New Section 4 requires peer review of all overpayment audits, New Section 5 requires overpayment audits to be completed and notification to be given within 60 days of the receipt of all records requested, New Section 6 requires the publishing of overpayment audit information, and Section 10(7) requires the department to provide training. It is estimated that to meet the time requirements of this bill and to provide the services in New Sections 4, 6, and 10(7) that 1.00 FTE will be required.

a) It is estimated that salary and benefits for 1.00 FTE would be $50,144 per year.
b) New employee package including furniture, chair and computer is $2,875 per FTE and is a one-time only cost.
c) On-going network connectivity, phone and supplies per FTE are estimated to be $1,620.

7. It is assumed that the costs identified in assumptions b) through e) are eligible for the Medicaid administrative funding split of 50% federal funds and 50% general funds.
8. Section 8(6) requires the department to reimburse a provider for the costs and attorney fees incurred in disputing an overpayment determination if it is found that the overpayment determination was frivolous or lacking a reasonable basis. All overturned determinations could meet the definition of without frivolous or lacking a reasonable basis, therefore it is assumed that the department will pay for the legal costs of all overturned determinations.
   a) It is assumed that the average attorney time for one case would be 40 hours at a cost of $250 per hour.
   b) It is assumed that seven cases per year might be overturned resulting in a cost to the department of $70,000.
   c) These costs would be 100% general fund.
9. New Section 7 of this bill requires the evaluation of auditors and the adoption of rules for the conduct of auditors. A cost to the department for this requirement is unable to be determined.
10. Changes in overpayment recoveries are unable to be determined.

	FY 2016 Difference	**FY 2017 Difference**	**FY 2018 Difference**	**FY 2019 Difference**
Fiscal Impact:				
FTE	1.00	1.00	1.00	1.00
Expenditures:				
Personal Services	$50,144	$50,144	$50,896	$51,660
Operating Expenses	$93,884	$91,109	$92,474	$93,860
TOTAL Expenditures	$144,028	$141,253	$143,370	$145,519
Funding of Expenditures:				
General Fund (01)	$107,014	$105,627	$106,685	$107,760
Federal Special Revenue (03)	$37,014	$35,627	$36,685	$37,760
TOTAL Funding of Exp.	$144,028	$141,253	$143,370	$145,519
Revenues:				
General Fund (01)	$0	$0	$0	$0
Federal Special Revenue (03)	$37,014	$35,577	$36,635	$37,710
TOTAL Revenues	$37,014	$35,577	$36,635	$37,710
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($107,014)	($105,627)	($106,685)	($107,760)
Federal Special Revenue (03)	$0	($50)	($50)	($50)

Technical Notes:

1. New Section 2(2) requires the auditor to reimburse the provider for the costs incurred for providing the information in a non-electronic manner. The cost of providing non-electronic copies of records is considered part of the cost of doing business and is included in the Medicaid rates paid to the provider.
2. New Section 2(3)(a)(ii) limits the department's ability to look at records and may put the agency out of compliance with federal Medicaid overpayment audit requirements.
3. New Section 2(3)(b) limits the department or auditors ability to request additional records. This requirement of the bill opens the department up to potential litigation regarding the timing of information requests.
4. Terminology in New Section 5 and Section 8(5) does not conform with contemporary usage of current terms in Medicaid program integrity.
5. New Section 2(5) the bill does not define suspected fraud.
6. New Section 3 limits the department from using statistical sampling and thus curtails the amount of quantitative information available to program management. Statistical sampling is a standard auditing process that helps eliminate bias in the sampling pool.
7. New Section 4 of the bill is unclear on how the department is expected to proceed if a peer cannot be obtained. The bill is also unclear on what the scope of review of the peer would be.
8. New Section 5(1) the department has concerns regarding the departments or auditors ability to obtain and review all records requested through the audit, allow for peer review, and write the notice of overpayment within 60 days.
9. New Section 5(2) conflicts with federal regulations for federal Medicaid audit compliance.
10. The language in New Section 5(3)(b) is unclear and ambiguous as it appears to be in conflict with New Section 5(2).
11. New Section 7 the department and auditors conduct Medicaid overpayment audits under Generally Accepted Auditing Standards (GAAS). This section puts the department or auditor in a position to set standards in opposition to GAAS.
12. New Section 7 is unclear if the auditor evaluations also apply to the peers contracted by the department to perform the peer reviews.
13. Section 8(2)(c) and (6). If the department, hearings officer, or court finds the overpayment determination to be unreasonable, frivolous or without merit, all hearings or court findings that overturn an overpayment decision the department would still be liable to repay CMS for the federal share of the identified overpayment. The department would be under the obligation to repay this amount with general funds.
14. Language used in Section 9(13)(a) does not clarify that this bill excludes overpayments generated by the Medicaid Management Information System.
15. The department has concerns under Section 10(7)(c) pertaining to the maintaining of confidentiality of providers and clients based on the specificity of the information required to be published. This section may compromise that confidentiality and may be in conflict with HIPAA.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*