



General Assembly

Amendment

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LCO No. 9336



Offered by:

REP. ABERCROMBIE, 83rd Dist.

SEN. MOORE, 22nd Dist.

REP. WOOD, 141st Dist.

SEN. SLOSSBERG, 14th Dist.

To: Subst. House Bill No. 6550

File No. 523

Cal. No. 329

"AN ACT CONCERNING MEDICAID PROVIDER AUDITS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Subsection (d) of section 17b-99 of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective July*
5 *1, 2015*):

6 (d) (1) The Commissioner of Social Services, or any entity with
7 which the commissioner contracts[,] for the purpose of conducting an
8 audit of a service provider that participates as a provider of services in
9 a program operated or administered by the department pursuant to
10 this chapter or chapter 319t, 319v, 319y or 319ff, except a service
11 provider for which rates are established pursuant to section 17b-340,
12 shall conduct any such audit in accordance with the provisions of this
13 subsection. For purposes of this subsection, (A) "clerkal error" means

14 an unintentional typographical, scrivener's or computer error, (B)
15 "extrapolation" means the determination of an unknown value by
16 projecting the results of the review of a sample to the universe from
17 which the sample was drawn, (C) "ninety-five per cent confidence
18 level" means there is a probability of at least ninety-five per cent that
19 the result is reliable, (D) "provider" means a person, public agency,
20 private agency or proprietary agency that is licensed, certified or
21 otherwise approved by the commissioner to supply services
22 authorized by the programs set forth in said chapters, (E) "stratified
23 sampling" means a method of sampling that involves the division of a
24 population into smaller groups known as strata based on shared
25 attributes, characteristics or similar paid claim amounts, (F)
26 "statistically valid sampling and extrapolation methodology" means a
27 methodology that is (i) validated by a statistician who has completed
28 graduate work in statistics and has significant experience developing
29 statistically valid samples and extrapolating the results of such
30 samples on behalf of government entities, (ii) provides for the
31 exclusion of highly unusual claims that are not representative of the
32 universe of paid claims, (iii) has a ninety-five per cent confidence level
33 or greater, and (iv) includes stratified sampling when applicable, and
34 (G) "universe" means a defined population of claims [submitted by]
35 paid to a provider during a specific time period.

36 [(1)] (2) Not less than thirty days prior to the commencement of any
37 such audit, the commissioner, or any entity with which the
38 commissioner contracts to conduct an audit of a participating provider,
39 shall provide written notification of the audit to such provider and the
40 statistically valid sampling and extrapolation methodology to be used
41 in conducting such audit, unless the commissioner, or any entity with
42 which the commissioner contracts to conduct an audit of a
43 participating provider makes a good faith determination that (A) the
44 health or safety of a recipient of services is at risk; or (B) the provider is
45 engaging in vendor fraud. [A copy of the regulations established
46 pursuant to subdivision (11) of this subsection shall be appended to
47 such notification.] At the commencement of the audit, the

48 commissioner, or any entity with which the commissioner contracts to
49 conduct an audit of a participating provider, shall disclose (i) the name
50 and contact information of the assigned auditor or auditors, (ii) the
51 audit location, including notice of whether such audit shall be
52 conducted on-site or through record submission, and (iii) the manner
53 by which information requested shall be submitted. No audit shall
54 include claims paid more than thirty-six months from the date claims
55 are selected for the audit. A scanned copy of documentation
56 supporting a claim shall be acceptable when the original
57 documentation is unavailable.

58 [(2)] (3) Any clerical error [, including, but not limited to,
59 recordkeeping, typographical, scrivener's or computer error,]
60 discovered in a record or document produced for any such audit shall
61 not of itself constitute a wilful violation of program rules unless proof
62 of intent to commit fraud or otherwise violate program rules is
63 established. In determining which providers shall be subject to audits,
64 the Commissioner of Social Services may give consideration to the
65 history of a provider's compliance in addition to other criteria used to
66 select a provider for an audit.

67 [(3)] (4) A finding of overpayment or underpayment to a provider in
68 a program operated or administered by the department pursuant to
69 this chapter or chapter 319t, 319v, 319y or 319ff, except a provider for
70 which rates are established pursuant to section 17b-340, shall not be
71 based on extrapolation unless [(A) there is a determination of
72 sustained or high level of payment error involving the provider, (B)
73 documented educational intervention has failed to correct the level of
74 payment error, or (C) the value of the claims in aggregate exceeds two
75 hundred thousand dollars on an annual basis.] the total net amount of
76 extrapolated overpayment calculated from a statistically valid
77 sampling and extrapolation methodology exceeds two and one-half
78 per cent of total claims paid to the provider for the audit period.

79 [(4)] (5) A provider, in complying with the requirements of any such
80 audit, shall be allowed not less than thirty days to provide

81 documentation in connection with any discrepancy discovered and
82 brought to the attention of such provider in the course of any such
83 audit. Such documentation may include evidence that errors
84 concerning payment and billing resulted from a provider's transition
85 to a new payment or billing service or accounting system. The
86 commissioner shall not calculate an overpayment based on
87 extrapolation or attempt to recover such extrapolated overpayment
88 when the provider presents credible evidence that an error by the
89 commissioner, or any entity with which the commissioner contracts to
90 conduct an audit pursuant to this subsection, caused the overpayment,
91 provided the commissioner may recover the amount of the original
92 overpayment.

93 [(5)] (6) The commissioner, or any entity with which the
94 commissioner contracts, for the purpose of conducting an audit of a
95 provider of any of the programs operated or administered by the
96 department pursuant to this chapter or chapter 319t, 319v, 319y or
97 319ff, except a service provider for which rates are established
98 pursuant to section 17b-340, shall produce a preliminary written report
99 concerning any audit conducted pursuant to this subsection, and such
100 preliminary report shall be provided to the provider that was the
101 subject of the audit not later than sixty days after the conclusion of
102 such audit.

103 [(6)] (7) The commissioner, or any entity with which the
104 commissioner contracts, for the purpose of conducting an audit of a
105 provider of any of the programs operated or administered by the
106 department pursuant to this chapter or chapter 319t, 319v, 319y or
107 319ff, except a service provider for which rates are established
108 pursuant to section 17b-340, shall, following the issuance of the
109 preliminary report pursuant to subdivision [(5)] (6) of this subsection,
110 hold an exit conference with any provider that was the subject of any
111 audit pursuant to this subsection for the purpose of discussing the
112 preliminary report. Such provider may present evidence at such exit
113 conference refuting findings in the preliminary report.

114 ~~[(7)]~~ (8) The commissioner, or any entity with which the
115 commissioner contracts, for the purpose of conducting an audit of a
116 service provider, shall produce a final written report concerning any
117 audit conducted pursuant to this subsection. Such final written report
118 shall be provided to the provider that was the subject of the audit not
119 later than sixty days after the date of the exit conference conducted
120 pursuant to subdivision ~~[(6)]~~ (7) of this subsection, unless the
121 commissioner, or any entity with which the commissioner contracts ~~[]~~
122 for the purpose of conducting an audit of a service provider, agrees to
123 a later date or there are other referrals or investigations pending
124 concerning the provider.

125 ~~[(8)]~~ (9) Any provider aggrieved by a decision contained in a final
126 written report issued pursuant to subdivision ~~[(7)]~~ (8) of this
127 subsection may, not later than thirty days after the receipt of the final
128 report, request, in writing, a ~~[review on all items of aggrievement]~~
129 contested case hearing in accordance with chapter 54. Such request
130 shall contain a detailed written description of each specific item of
131 aggrievement. The designee of the commissioner who presides over
132 the ~~[review]~~ hearing shall be impartial and shall not be an employee of
133 the Department of Social Services Office of Quality Assurance or an
134 employee of an entity with which the commissioner contracts for the
135 purpose of conducting an audit of a service provider. A provider shall
136 be permitted to raise during such hearing that a negative audit finding
137 was due to a provider's compliance with a state or federal law or
138 regulation. Following review on all items of aggrievement, the
139 designee of the commissioner who presides over the ~~[review]~~ hearing
140 shall issue a final decision not later than ninety days following the
141 close of evidence or the date on which final briefs are filed, whichever
142 occurs later. When a provider requests a hearing pursuant to this
143 subdivision, and the provider is contesting an overpayment amount
144 based on extrapolation, the Department of Social Services shall not
145 recoup the overpayment amount at issue until a final decision is issued
146 after the hearing.

147 [(9) A provider may appeal a final decision issued pursuant to
148 subdivision (8) of this subsection to the Superior Court in accordance
149 with the provisions of chapter 54.]

150 (10) The provisions of this subsection shall not apply to any audit
151 conducted by the Medicaid Fraud Control Unit established within the
152 Office of the Chief State's Attorney.

153 [(11) The commissioner shall adopt regulations, in accordance with
154 the provisions of chapter 54, to carry out the provisions of this
155 subsection and to ensure the fairness of the audit process, including,
156 but not limited to, the sampling methodologies associated with the
157 process.]

158 (11) The commissioner shall provide free training to providers on
159 how to enter claims to avoid [clerical] errors and shall post information
160 on the department's Internet web site concerning the auditing process
161 and methods to avoid clerical errors. Not later than February 1, 2015,
162 the commissioner shall establish and publish on the department's
163 Internet web site audit protocols to assist the Medicaid provider
164 community in developing programs to improve compliance with
165 Medicaid requirements under state and federal laws and regulations,
166 provided audit protocols may not be relied upon to create a
167 substantive or procedural right or benefit enforceable at law or in
168 equity by any person, including a corporation. The commissioner shall
169 establish audit protocols for specific providers or categories of service,
170 including, but not limited to: (A) Licensed home health agencies, (B)
171 drug and alcohol treatment centers, (C) durable medical equipment,
172 (D) hospital outpatient services, (E) physician and nursing services, (F)
173 dental services, (G) behavioral health services, (H) pharmaceutical
174 services, [and] (I) emergency and nonemergency medical
175 transportation services, and (J) not later than January 1, 2016,
176 homemaker companion services. The commissioner shall ensure that
177 the Department of Social Services, or any entity with which the
178 commissioner contracts to conduct an audit pursuant to this
179 subsection, has on staff or consults with, as needed, a medical or dental

180 professional who is experienced in the treatment, billing and coding
181 procedures used by the provider being audited.

182 Sec. 2. Section 17b-99a of the general statutes is repealed and the
183 following is substituted in lieu thereof (*Effective July 1, 2015*):

184 (a) (1) For purposes of this section, (A) "clerical error" means an
185 unintentional typographical, scrivener's or computer error, (B)
186 "extrapolation" means the determination of an unknown value by
187 projecting the results of the review of a sample to the universe from
188 which the sample was drawn, [(B)] (C) "facility" means any facility
189 described in this subsection and for which rates are established
190 pursuant to section 17b-340, (D) "ninety-five per cent confidence level"
191 means there is a probability of at least ninety-five per cent that the
192 result is reliable, (E) "stratified sampling" means a method of sampling
193 that involves the division of a population into smaller groups known
194 as strata based on shared attributes, characteristics or similar costs
195 reported, (F) "statistically valid sampling and extrapolation
196 methodology" means a methodology that is (i) validated by a
197 statistician who has completed graduate work in statistics and has
198 significant experience developing statistically valid samples and
199 extrapolating the results of such samples on behalf of government
200 entities, (ii) provides for the exclusion of highly unusual costs that are
201 not representative of the universe of reported costs, (iii) has a ninety-
202 five per cent confidence level or greater, and (iv) includes stratified
203 sampling when applicable, and [(C)] (G) "universe" means a defined
204 population of [claims submitted by] costs reported by a facility during
205 a specific time period.

206 (2) The Commissioner of Social Services, or any entity with which
207 the commissioner contracts to conduct an audit pursuant to this
208 section, shall conduct any audit of a licensed chronic and convalescent
209 nursing home, chronic disease hospital associated with a chronic and
210 convalescent nursing home, a rest home with nursing supervision, a
211 licensed residential care home, as defined in section 19a-490, and a
212 residential facility for persons with intellectual disability which is

213 licensed pursuant to section 17a-227 and certified to participate in the
214 Medicaid program as an intermediate care facility for individuals with
215 intellectual disabilities in accordance with the provisions of this
216 section. The commissioner shall audit costs reported not later than
217 thirty-six months from the required filing deadline of the annual cost
218 report of a long-term care facility. The commissioner, in the absence of
219 any state or federal law or regulation imposing a specific limit on the
220 allowability of a particular cost item, shall rely on federal Medicare
221 principles for the determination of reasonable costs. The commissioner
222 shall accept a scanned copy of documentation supporting a reported
223 cost when original documentation is not available.

224 (b) Not less than thirty days prior to the commencement of any such
225 audit, the commissioner shall provide written notification of the audit
226 to such facility and the statistically valid sampling and extrapolation
227 methodology to be used, unless the commissioner makes a good-faith
228 determination that (1) the health or safety of a recipient of services is at
229 risk; or (2) the facility is engaging in vendor fraud under sections 53a-
230 290 to 53a-296, inclusive. At the commencement of the audit, the
231 commissioner, or any entity with which the commissioner contracts to
232 conduct an audit of a participating provider, shall disclose (i) the name
233 and contact information of the assigned auditor or auditors, (ii) the
234 audit location, including notice of whether such audit shall be
235 conducted on-site or through record submission, and (iii) the manner
236 by which information requested shall be submitted.

237 (c) Any clerical error [, including, but not limited to, recordkeeping,
238 typographical, scrivener's or computer error,] discovered in a record or
239 document produced for any such audit [,] shall not of itself constitute a
240 wilful violation of the rules of a medical assistance program
241 administered by the Department of Social Services unless proof of
242 intent to commit fraud or otherwise violate program rules is
243 established. In determining which facilities shall be subject to audits,
244 the Commissioner of Social Services may give consideration to the
245 history of a facility's compliance in addition to other criteria used to

246 select a facility for an audit.

247 (d) A finding of overpayment or underpayment to such facility shall
248 not be based on extrapolation unless [(1) there is a determination of
249 sustained or high level of payment error involving the facility, (2)
250 documented educational intervention has failed to correct the level of
251 payment error, or (3) the value of the claims in aggregate exceeds two
252 hundred thousand dollars on an annual basis.] (1) the extrapolated
253 overpayment calculated from a statistically valid sampling and
254 extrapolation methodology exceeds two and one-half per cent of total
255 costs reported for the audit period.

256 (e) A facility, in complying with the requirements of any such audit,
257 shall be allowed not less than thirty days to provide documentation in
258 connection with any discrepancy discovered and brought to the
259 attention of such facility in the course of any such audit. Such
260 documentation may include evidence that errors concerning cost
261 reporting resulted from a facility's transition to a new payment or
262 billing service or accounting system. The commissioner shall not
263 calculate an overpayment based on extrapolation or attempt to recoup
264 such extrapolated overpayment when the facility presents credible
265 evidence that an error by the department caused the overpayment,
266 provided the commissioner may recover the amount of the original
267 overpayment.

268 (f) The commissioner shall produce a preliminary written report
269 [concerning any audit conducted pursuant to this section] of any
270 proposed rate adjustments resulting from the audit and a draft rate
271 computation report that includes the impact of proposed adjustments
272 and such preliminary report shall be provided to the facility that was
273 the subject of the audit not later than sixty days after the conclusion of
274 such audit.

275 (g) The commissioner shall, following the issuance of the
276 preliminary report pursuant to subsection (f) of this section, hold an
277 exit conference with any facility that was the subject of any audit

278 pursuant to this subsection for the purpose of discussing the
279 preliminary report. Such facility may present evidence at such exit
280 conference refuting findings in the preliminary report.

281 (h) The commissioner shall produce a final written report
282 concerning any audit conducted pursuant to this [subsection] section.
283 Such final written report shall be provided to the facility that was the
284 subject of the audit not later than sixty days after the date of the exit
285 conference conducted pursuant to subsection (g) of this section, unless
286 the commissioner and the facility agree to a later date or there are
287 other referrals or investigations pending concerning the facility.

288 (i) Any facility aggrieved by a final report issued pursuant to
289 subsection (h) of this section may request a [rehearing] hearing. A
290 [rehearing] hearing shall be held by the commissioner or the
291 commissioner's designee, provided a detailed written description of all
292 items of aggrievement in the final report is filed by the facility not later
293 than ninety days following the date of written notice of the
294 commissioner's decision. The [rehearing] hearing shall be held not later
295 than thirty days following the date of filing of the detailed written
296 description of each specific item of aggrievement. The commissioner
297 shall issue a final decision not later than sixty days following the close
298 of evidence or the date on which final briefs are filed, whichever
299 occurs later. Any items not resolved at such [rehearing] hearing to the
300 satisfaction of the facility or the commissioner shall be submitted to
301 binding arbitration by an arbitration board consisting of one member
302 appointed by the facility, one member appointed by the commissioner
303 and one member appointed by the Chief Court Administrator from
304 among the retired judges of the Superior Court, which retired judge
305 shall be compensated for his services on such board in the same
306 manner as a state referee is compensated for his services under section
307 52-434. The proceedings of the arbitration board and any decisions
308 rendered by such board shall be conducted in accordance with the
309 provisions of the Social Security Act, 42 USC 1396, as amended from
310 time to time, and chapter 54. In any case involving an extrapolated

311 error, the department shall not subject the facility to a recoupment
312 assessment that exceeds the amount of the original error until the
313 facility exhausts any rights pursuant to this section.

314 (j) The submission of any false or misleading fiscal information or
315 data to the commissioner shall be grounds for suspension of payments
316 by the state under sections 17b-239 to 17b-246, inclusive, and sections
317 17b-340 and 17b-343, in accordance with regulations adopted by the
318 commissioner. In addition, any person, including any corporation,
319 who knowingly makes or causes to be made any false or misleading
320 statement or who knowingly submits false or misleading fiscal
321 information or data on the forms approved by the commissioner shall
322 be guilty of a class D felony.

323 (k) The commissioner, or any agent authorized by the commissioner
324 to conduct any inquiry, investigation or hearing under the provisions
325 of this section, shall have power to administer oaths and take
326 testimony under oath relative to the matter of inquiry or investigation.
327 At any hearing ordered by the commissioner, the commissioner or
328 such agent having authority by law to issue such process may
329 subpoena witnesses and require the production of records, papers and
330 documents pertinent to such inquiry. If any person disobeys such
331 process or, having appeared in obedience thereto, refuses to answer
332 any pertinent question put to the person by the commissioner or the
333 commissioner's authorized agent or to produce any records and papers
334 pursuant thereto, the commissioner or the commissioner's agent may
335 apply to the superior court for the judicial district of Hartford or for
336 the judicial district wherein the person resides or wherein the business
337 has been conducted, or to any judge of such court if the same is not in
338 session, setting forth such disobedience to process or refusal to answer,
339 and such court or judge shall cite such person to appear before such
340 court or judge to answer such question or to produce such records and
341 papers.

342 (l) [The commissioner shall adopt regulations, in accordance with
343 the provisions of chapter 54, to carry out the provisions of this section

344 and to ensure the fairness of the audit process, including, but not
 345 limited to, the sampling methodologies associated with the process.]
 346 The commissioner shall provide free training to facilities on the
 347 preparation of cost reports to avoid [clerical] errors and shall post
 348 information on the department's Internet web site concerning the
 349 auditing process and methods to avoid [clerical] errors. Not later than
 350 April 1, 2015, the commissioner shall establish audit protocols to assist
 351 facilities subject to audit pursuant to this section in developing
 352 programs to improve compliance with Medicaid requirements under
 353 state and federal laws and regulations, provided audit protocols may
 354 not be relied upon to create a substantive or procedural right or benefit
 355 enforceable at law or in equity by any person, including a corporation.
 356 The commissioner shall establish and publish on the department's
 357 Internet web site audit protocols for: [(1)] (A) Licensed chronic and
 358 convalescent nursing homes, [(2)] (B) chronic disease hospitals
 359 associated with chronic and convalescent nursing homes, [(3)] (C) rest
 360 homes with nursing supervision, [(4)] (D) licensed residential care
 361 homes, as defined in section 19a-490, and [(5)] (E) residential facilities
 362 for persons with intellectual disabilities that are licensed pursuant to
 363 section 17a-227 and certified to participate in the Medicaid program as
 364 intermediate care facilities for individuals with intellectual disabilities.
 365 The commissioner shall ensure that the Department of Social Services,
 366 or any entity with which the commissioner contracts to conduct an
 367 audit pursuant to this section, has on staff or consults with, as needed,
 368 licensed health professionals with experience in treatment, billing and
 369 coding procedures used by the facilities being audited pursuant to this
 370 section."

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2015	17b-99(d)
Sec. 2	July 1, 2015	17b-99a