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Subject: Testimony on House Bill 2202

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Bill Description: KDHE appreciates the opportunity to give testimony on HB 2202, Service Provider Audit Protection Act. This act would allow Medicaid service providers certain rights and protections against audits conducted under the authority of the Secretary of KDHE.

Agency/Program Impact:

The bill states that any clerical error discovered on a record or document during an audit of a service provider conducted by KDHE, shall not of itself constitute intent to violate Medicaid program rules unless proof of intent is established by KDHE. As a condition for receiving federal funds, the State Medicaid Agency (SMA) must follow all federal laws and regulations. All audits conducted by the SMA are done so under certain federal laws and regulations (1902 (a) (30) (A-C) of the SSA; 42 CFR Parts 456.23, 456.3, and 456.50) that specify the SMA must safeguard against unnecessary or inappropriate use of Medicaid services and recover excess payments. Therefore, any state law that interferes with the SMA's ability to monitor provider practices that "are inconsistent with sound fiscal, business, or medical, and result in an unnecessary cost to the Medicaid program (42 CFR Part 433.304 and 455.2)" and recover intended and non-intended overpayments would render the SMA non-compliant with federal law and regulation and jeopardize past, current, and future federal funding. Any error found during an audit, whether intentional or not, that does not meet established Medicaid rules and requirements must be recovered by the SMA. Furthermore, it is KDHE's view that this bill does not affect federal audits and reviews performed by the Health and Human Services-Office of Inspector General (HHS-OIG), the Centers for Medicare and Medicaid Services (CMS), or federally contracted entities as these audits would fall outside of the SMA's jurisdiction. Although providers are subject to reviews and audits conducted by KDHE, CMS has of late increased their presence in states through audits conducted by the Medicaid Integrity Contractor (MIC), the Payment Error Rate Measurement (PERM), and Recovery Audit Contractors (RAC).

The bill also states that KDHE must provide 30 day advance notice to a service provider prior to conducting an audit with certain exceptions and prohibits KDHE from contracting with an entity and reimbursing for auditing services based on a commission or a contingency fee. Again, KDHE is bound by federal law and regulation regarding these provisions. Legislation requiring KDHE to give notice to providers prior to an audit conflicts with Section 1902 (a)(27)(A) and (B) of the Social Security Act, which requires providers to, "furnish *upon request* by the state agency or secretary of Health and Human Services information on payment claimed by the provider." Additionally, KDHE is required by federal regulation to pay certain entities a contingency fee for the identification of overpayments. 42 CFR Part 455.510 states that "fees paid to a Recovery Audit Contractor (RAC) must be made only from amounts recovered and the State must determine the contingency fee rate to be paid to Medicaid RACs for the identification and recovery of Medicaid provider overpayments. Fees paid to

the RAC are available for Federal Financial Participation (FFP) if paid under the contingency model.” A contingency fee model also protects the Agency from paying a contractor if no overpayments are identified and recovered, thus saving state dollars.

HB 2202 also stipulates that KDHE must consult with a licensed service provider when conducting audits requiring clinical or professional judgment; prohibits the agency from using extrapolation to determine improper payments; allows providers the opportunity to provide supporting documentation and entitles providers to a judicial review; and requires KDHE to provide free training to providers on proper billing practices, audit protocols, and internal compliance. The opinion of KDHE is that these provisions are unnecessary and duplicative of current and existing practices.

KDHE currently utilizes professionals licensed in specific clinical areas to support audit functions. These audits are not conducted in a clinical vacuum.

Secondly, although KDHE is permitted by Kansas Administrative Regulations (KAR 30-5-58) to perform extrapolation methods to conduct audits, the Agency has, in practice, chosen not to utilize extrapolation methods to conduct audits performed by the State. However, federal auditing entities do, occasionally, use extrapolation of which KDHE has no control over.

Moreover, KDHE follows all applicable federal and state laws regarding audit proceedings and provider appeal rights following an adverse decision. Currently, providers are given 30 days to provide supporting documentation to refute findings following a preliminary review. This documentation is reviewed and a final determination letter is issued to the provider; upon which, the provider has the right to request a fair hearing under KSA 77-501 and KAR 30-7-64. These hearings are conducted by an impartial judge through the Office of Administrative Hearings (OAH). If the provider is not satisfied with the outcome of those proceedings, the provider may appeal the decision by the OAH.

Lastly, KDHE is concerned that the provision requiring the Agency to provide free training to providers would cause undue restrictions on the oversight afforded KDHE. KDHE is not in a position to dictate internal compliance methods and audit protocols to Medicaid providers as this is beyond the scope of the Agency. Providers have certain responsibilities that come with providing medical services. Part of those responsibilities include ensuring they are following all applicable laws and regulations and have sound fiscal, business, and medical practices in place. Audits are not a pleasant activity, but they are necessary to ensure State and Federal dollars are not being misspent. Regarding training on billing practices, KDHE acknowledges Medicaid is a complicated program. However, KDHE has gone to great lengths to ensure providers have resources free of charge to navigate the Medicaid billing requirements. The Kansas Medical Assistance Program (KMAP) website includes all applicable provider manuals, bulletins, training materials, appeals rights and other useful information. Additionally, KMAP customer service provides in depth assistance to providers for any concern they may have.

KDHE believes this bill would put the Agency at risk for non-compliance with federal laws and regulations, jeopardize federal funding, and impact the Agency’s ability to effectively monitor Medicaid and State funds for improper payments and potential fraud. The SMA has the responsibility to monitor provider adherence to existing state and federal laws and regulations, ensure State and Federal dollars are not being spent inappropriately, and maintain the integrity of the Medicaid program.