

HOUSE BILL No. 2202

By Committee on Health and Human Services

2-2

1 AN ACT concerning the Kansas program of medical assistance; relating to
2 service provider audits; enacting the service provider audit protection
3 act.

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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. Sections 1 through 5, and amendments thereto, shall be
7 known and may be cited as the service provider audit protection act.

8 Sec. 2. As used in the service provider audit protection act:

9 (a) "Department" means the department of health and environment.

10 (b) "Extrapolation" means a mathematical process or technique used
11 by the secretary in the audit of a service provider to estimate audit results
12 or findings for a larger batch or group of claims not reviewed by the
13 secretary.

14 (c) "Secretary," unless otherwise specified, means the secretary of
15 health and environment, or any entity with which the secretary contracts,
16 for the purpose of conducting an audit of a service provider.

17 (d) "Service provider" means a service provider participating in the
18 medicaid program.

19 (e) "Medicaid program" means the Kansas program of medical
20 assistance established in accordance with title XIX of the federal social
21 security act, 42 U.S.C. § 1396 et seq., and amendments thereto.

22 Sec. 3. (a) Any clerical error, including, but not limited to,
23 recordkeeping, typographical, scrivener's or computer error, discovered in
24 a record or document produced for any audit conducted by the secretary of
25 a service provider shall not of itself constitute intent to violate medicaid
26 program rules unless proof of intent to violate medicaid program rules is
27 established by the secretary.

28 (b) (1) Except as provided in subsection (b)(2), the secretary shall
29 provide written notification to a service provider of intent to audit such
30 service provider to such service provider not less than 30 days prior to the
31 commencement of the audit. Such written notification shall include a copy
32 of the department's rules and regulations adopted pursuant to section 4,
33 and amendments thereto.

34 (2) The secretary is not required to provide notice to a service
35 provider of intent to audit such service provider if the secretary makes a
36 good faith determination that:

1 (A) The health or safety of a recipient of services under the medicaid
2 program is at risk; or

3 (B) the service provider is engaging in fraud.

4 (c) The secretary may give consideration to the history of a service
5 provider's compliance with medicaid program rules, in addition to other
6 criteria, in determining which service providers shall be subject to audits.
7 In addition, the secretary shall consult with a licensed service provider
8 when conducting an audit requiring clinical or professional judgment.

9 Sec. 4. (a) (1) Except as provided in subsection (a)(2), a finding of
10 overpayment or underpayment to a service provider shall not be based on
11 extrapolation.

12 (2) A finding of overpayment or underpayment to a service provider
13 may be based on extrapolation if:

14 (A) There is a determination of sustained or high level of payment
15 error involving the service provider;

16 (B) documented educational intervention has failed to correct the
17 level of payment error; or

18 (C) the value of the claims in aggregate exceeds \$150,000 on an
19 annual basis. A finding of overpayment or underpayment to a service
20 provider shall not accrue interest during the audit period.

21 (b) (1) A service provider shall be allowed not less than 30 days to
22 provide documentation in connection with any discrepancy discovered by
23 the secretary and brought to the attention of such service provider in the
24 course of any such audit.

25 (2) The secretary shall produce a preliminary written report
26 concerning any audit conducted of a service provider to such service
27 provider not later than 60 days after the conclusion of the audit. Following
28 the issuance of such preliminary written report, the secretary shall hold an
29 exit conference with any service provider that was the subject of an audit
30 for the purpose of discussing the preliminary report. Such service provider
31 may present evidence refuting any findings in the preliminary report at the
32 exit conference.

33 (c) (1) Except as provided in subsection (c)(2), the secretary shall
34 produce a final written report of an audit conducted of a service provider
35 to such service provider not later than 60 days after the date of the exit
36 conference conducted pursuant to subsection (b).

37 (2) The secretary may produce a written report of an audit conducted
38 of a service provider to such service provider if the secretary agrees to a
39 later date after the date of the exit conference conducted pursuant to
40 subsection (b).

41 (d) Any service provider aggrieved by a decision contained in a final
42 written report issued pursuant to subsection (c) may request a review on all
43 items of grievement in writing not later than 30 days after receipt of the

1 final report. Such request shall contain a detailed written description of
2 each specific item of aggrievement. The designee of the secretary of health
3 and environment who presides over the review shall be impartial and shall
4 not be an employee of the department of health and environment or an
5 employee of an entity with which the secretary of health and environment
6 contracts for the purpose of conducting an audit of a service provider.
7 Following review on all items of aggrievement, such designee of the
8 secretary of health and environment who presides over the review shall
9 issue a final decision.

10 (e) Any service provider aggrieved by a final decision issued by the
11 secretary, and affected thereby, shall be entitled to judicial review in
12 accordance with the provisions of the Kansas judicial review act.

13 (f) The provisions of this section shall not apply to any audit
14 conducted by the office of the attorney general.

15 (g) The secretary of health and environment shall promulgate rules
16 and regulations necessary to effectuate the provisions of the service
17 provider audit protection act and to ensure the fairness of the audit process,
18 including, but not limited to, the sampling methodologies associated with
19 the audit process.

20 (h) The department shall provide free training to service providers on
21 how to enter claims to avoid clerical errors and shall post information on
22 the department's official internet website concerning the auditing process
23 and methods to avoid clerical errors. The department shall establish and
24 publish on the department's official internet website audit protocols to
25 assist the service provider community in developing programs to improve
26 compliance with the medicaid program requirements under state and
27 federal laws and regulations. Such audit protocols shall not be relied upon
28 to create any substantive or procedural right or benefit enforceable at law
29 or in equity by any person, including a corporation. The department shall
30 establish audit protocols for specific service providers or categories of
31 service, including, but not limited to: (1) Licensed home health agencies;
32 (2) drug and alcohol treatment programs; (3) durable medical equipment;
33 (4) hospital outpatient services; (5) services provided by nurses or persons
34 licensed to practice medicine and surgery; (6) dental services; (7)
35 behavioral health services; (8) pharmaceutical services; and (9) emergency
36 and nonemergency medical transportation services. The department shall
37 consult with, as needed, a medical or dental professional who is
38 experienced in the treatment, billing and coding procedures used by a
39 service provider being audited.

40 (i) The secretary of health and environment shall not pay an entity for
41 auditing services under this section based on a commission or a percentage
42 of medicaid program payments recouped from a service provider.

43 Sec. 5. The secretary for health and environment shall annually

1 submit a report to the Robert G. (Bob) Bethell joint committee on home
2 and community based services and KanCare oversight of the audit
3 protocols and procedures established pursuant to the service provider audit
4 protection act, progress concerning audit protocols and any rules and
5 regulations promulgated pursuant to section 4, and amendments thereto.

6 Sec. 6. This act shall take effect and be in force from and after
7 January 1, 2016, and its publication in the statute book.