



General Assembly

**Amendment**

January Session, 2015

LCO No. 9404



Offered by:

REP. ABERCROMBIE, 83<sup>rd</sup> Dist.

SEN. MOORE, 22<sup>nd</sup> Dist.

REP. WOOD, 141<sup>st</sup> Dist.

SEN. SLOSSBERG, 14<sup>th</sup> 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4 repealed and the following is substituted in lieu thereof (*Effective July*  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 a  
35 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."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2015</i>	17b-99(d)