

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 260

Introduced by Hansen, B., 16.

Read first time January 15, 2019

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to the Medical Assistance Act; to amend
- 2 section 68-974, Reissue Revised Statutes of Nebraska; to change
- 3 provisions relating to recovery audit contractors; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 68-974, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 68-974 (1) The department ~~may shall~~ contract with one or more
4 recovery audit contractors to promote the integrity of the medical
5 assistance program and to assist with cost-containment efforts and
6 recovery audits. The contract or contracts ~~may shall~~ include services for
7 (a) cost-avoidance through identification of third-party liability, (b)
8 cost recovery of third-party liability through postpayment reimbursement,
9 (c) casualty recovery of payments by identifying and recovering costs for
10 claims that were the result of an accident or neglect and payable by a
11 casualty insurer, and (d) reviews of claims submitted by providers of
12 services or other individuals furnishing items and services for which
13 payment has been made to determine whether providers have been underpaid
14 or overpaid, and to take actions to recover any overpayments identified
15 or make payment for any underpayment identified.

16 (2) Notwithstanding any other provision of law, all recovery audit
17 contractors retained by the department when conducting a recovery audit
18 shall:

19 (a) Review claims within two years from the date of the payment;

20 (b) Send a determination letter concluding an audit within sixty
21 days after receipt of all requested material from a provider;

22 (c) In any records request to a provider, furnish information
23 sufficient for the provider to identify the patient, procedure, or
24 location;

25 (d) Develop and implement with the department a procedure in which
26 an improper payment identified by an audit may be resubmitted as a claims
27 adjustment;

28 (e) Utilize a licensed health care professional from the area of
29 practice being audited to establish relevant audit methodology consistent
30 with established practice guidelines, standards of care, and state-issued
31 medicaid provider handbooks;

1 (f) Provide a written notification and explanation of an adverse
2 determination that includes the reason for the adverse determination, the
3 medical criteria on which the adverse determination was based, an
4 explanation of the provider's appeal rights, and, if applicable, the
5 appropriate procedure to submit a claims adjustment in accordance with
6 subdivision (2)(d) of this section; and

7 (g) Schedule any onsite audits with advance notice of not less than
8 ten business days and make a good faith effort to establish a mutually
9 agreed upon time and date for the onsite audit.

10 (3) The department shall exclude the following from the scope of
11 review of recovery audit contractors: (a) Claims processed or paid
12 through a capitated medicaid managed care program; and (b) any claims
13 that are currently being audited or that have already been audited by the
14 recovery audit contractor or currently being audited by another entity.
15 No payment shall be recovered in a medical necessity review in which the
16 provider has obtained prior authorization for the service and the service
17 was performed as authorized.

18 (4) The department ~~may shall~~ contract with one or more persons to
19 support a health insurance premium assistance payment program.

20 (5) The department may enter into any other contracts deemed to
21 increase the efforts to promote the integrity of the medical assistance
22 program.

23 (6) Contracts entered into under the authority of this section may
24 be on a contingent fee basis. Contracts entered into on a contingent fee
25 basis shall provide that contingent fee payments are based upon amounts
26 recovered, not amounts identified. Whether the contract is a contingent
27 fee contract or otherwise, the contractor shall not recover overpayments
28 by the department until all appeals have been completed unless there is a
29 credible allegation of fraudulent activity by the provider, the
30 contractor has referred the claims to the department for investigation,
31 and an investigation has commenced. In that event, the contractor may

1 recover overpayment prior to the conclusion of the appeals process. In
2 any contract between the department and a recovery audit contractor, the
3 payment or fee provided for identification of overpayments shall be the
4 same provided for identification of underpayments. Contracts shall be in
5 compliance with federal law and regulations when pertinent, including a
6 limit on contingent fees of no more than twelve and one-half percent of
7 amounts recovered, and initial contracts shall be entered into as soon as
8 practicable under such federal law and regulations.

9 (7) All amounts recovered and savings generated as a result of this
10 section shall be returned to the medical assistance program.

11 (8) Records requests made by a recovery audit contractor in any one-
12 hundred-eighty-day period shall be limited to not more than five percent
13 of the number of claims filed by the provider for the specific service
14 being reviewed, not to exceed two hundred records. The contractor shall
15 allow a provider no less than forty-five days to respond to and comply
16 with a record request. If the contractor can demonstrate a significant
17 provider error rate relative to an audit of records, the contractor may
18 make a request to the department to initiate an additional records
19 request regarding the subject under review for the purpose of further
20 review and validation. The contractor shall not make the request until
21 the time period for the appeals process has expired.

22 (9) On an annual basis, the department shall require the recovery
23 audit contractor to compile and publish on the department's Internet web
24 site metrics related to the performance of each recovery audit
25 contractor. Such metrics shall include: (a) The number and type of issues
26 reviewed; (b) the number of medical records requested; (c) the number of
27 overpayments and the aggregate dollar amounts associated with the
28 overpayments identified by the contractor; (d) the number of
29 underpayments and the aggregate dollar amounts associated with the
30 identified underpayments; (e) the duration of audits from initiation to
31 time of completion; (f) the number of adverse determinations and the

1 overturn rating of those determinations in the appeal process; (g) the
2 number of appeals filed by providers and the disposition status of such
3 appeals; (h) the contractor's compensation structure and dollar amount of
4 compensation; and (i) a copy of the department's contract with the
5 recovery audit contractor.

6 (10) The recovery audit contractor, in conjunction with the
7 department, shall perform educational and training programs annually for
8 providers that encompass a summary of audit results, a description of
9 common issues, problems, and mistakes identified through audits and
10 reviews, and opportunities for improvement.

11 (11) Providers shall be allowed to submit records requested as a
12 result of an audit in electronic format, including ~~which shall include~~
13 compact disc, digital versatile disc, or other electronic format deemed
14 appropriate by the department or via facsimile transmission, at the
15 request of the provider.

16 (12)(a) A provider shall have the right to appeal a determination
17 made by the recovery audit contractor.

18 (b) The contractor shall establish an informal consultation process
19 to be utilized prior to the issuance of a final determination. Within
20 thirty days after receipt of notification of a preliminary finding from
21 the contractor, the provider may request an informal consultation with
22 the contractor to discuss and attempt to resolve the findings or portion
23 of such findings in the preliminary findings letter. The request shall be
24 made to the contractor. The consultation shall occur within thirty days
25 after the provider's request for informal consultation, unless otherwise
26 agreed to by both parties.

27 (c) Within thirty days after notification of an adverse
28 determination, a provider may request an administrative appeal of the
29 adverse determination as set forth in the Administrative Procedure Act.

30 (13) The department shall by December 1 of each year report to the
31 Legislature the status of the contracts, including the parties, the

1 programs and issues addressed, the estimated cost recovery, and the
2 savings accrued as a result of the contracts. Such report shall be filed
3 electronically.

4 (14) For purposes of this section:

5 (a) Adverse determination means any decision rendered by the
6 recovery audit contractor that results in a payment to a provider for a
7 claim for service being reduced or rescinded;

8 (b) Person means bodies politic and corporate, societies,
9 communities, the public generally, individuals, partnerships, limited
10 liability companies, joint-stock companies, and associations; and

11 (c) Recovery audit contractor means private entities with which the
12 department contracts to audit claims for medical assistance, identify
13 underpayments and overpayments, and recoup overpayments.

14 Sec. 2. Original section 68-974, Reissue Revised Statutes of
15 Nebraska, is repealed.