

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 315**

FINAL READING

Introduced by Howard, 9; Kolterman, 24; Bolz, 29.

Read first time January 15, 2015

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to the Medical Assistance Act; to amend
- 2 section 68-974, Revised Statutes Cumulative Supplement, 2014; to
- 3 change and add provisions relating to recovery audit contractors; to
- 4 harmonize provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 68-974, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

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

20       (5 3) 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 4) 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, and that contingent fee payments are  
27 not to be paid on amounts subsequently repaid due to determinations made  
28 in appeal proceedings. Whether the contract is a contingent fee contract  
29 or otherwise, the contractor shall not recover overpayments by the  
30 department until all appeals have been completed unless there is a  
31 credible allegation of fraudulent activity by the provider, the

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

11 (7 5) All amounts recovered and savings generated as a result of  
12 this section shall be returned to the medical assistance program.

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

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

1 identified underpayments; (e) the duration of audits from initiation to  
2 time of completion; (f) the number of adverse determinations and the  
3 overturn rating of those determinations in the appeal process; (g) the  
4 number of appeals filed by providers and the disposition status of such  
5 appeals; (h) the contractor's compensation structure and dollar amount of  
6 compensation; and (i) a copy of the department's contract with the  
7 recovery audit contractor.

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

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

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

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

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

1           (13 6) The department shall by December 1 of each year ~~, 2012,~~  
2 report to the Legislature the status of the contracts, including the  
3 parties, the programs and issues addressed, the estimated cost recovery,  
4 and the savings accrued as a result of the contracts. Such report shall  
5 be filed electronically.

6           (14 7) For purposes of this section:

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

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

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

16           Sec. 2. Original section 68-974, Revised Statutes Cumulative  
17 Supplement, 2014, is repealed.