

Tina Kotek, Governor

February 23, 2026

Senator Deb Patterson, Chair
Senator Cedric Hayden, Vice Chair
Senate Committee on Healthcare
900 Court Street NE
State Capitol
Salem, OR 97301

SUBJECT: HB 4028

Dear Chair and Committee Members:

The Oregon Health Authority (OHA) appreciates the opportunity to provide information relevant to HB 4028-A engrossed.

4028 proposes to decrease timelines and restrict circumstances under which OHA could perform audits in the Medicaid program

42 CFR 431.107 requires that Oregon's state plan for Medicaid must provide for agreements between providers and the Medicaid agency (OHA, for Oregon) that require a provider to "keep any records necessary to disclose the extent of services the provider furnishes to beneficiaries" and "on request, furnish" these records to OHA, the Medicaid Fraud Control Unit (MCFU) or the federal Secretary of Health and Human Services. The federal requirement is not subject to a time limit on how long providers must agree to keep and furnish records on request. Oregon complies with this requirement via terms in its Provider Enrollment Agreement (PEA) and its contracts with coordinated care organizations (CCOs). OHA's PEAs with individual providers must include an agreement that they both "keep" and "on request, furnish" service records. OHA (or ODHS in some instances) contracts directly with providers, including individual providers, or with CCOs who then contract with providers (CCO providers) to deliver services to individuals enrolled in the CCO's plan.

Regarding CCOs, 42 CFR 438.3(h) requires that "all contracts" [with CCOs and similar] provide that the OHA (along with listed federal officials or offices) "may, at any time, inspect and audit

any records or documents of the MCO, PIHP, PAHP, PCCM or PCCM entity, or its subcontractors, and may, at any time, inspect the premises, physical facilities, and equipment where Medicaid-related activities or work is conducted. **The right to audit under this section exists for 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later.**” (emphasis added). This CFR and the corresponding state administrative rules that accompany apply across all provider types, ensuring parity. There is risk that Oregon’s state plan for Medicaid could be deemed deficient based on these limitations (particularly with CCOs given the express 10-year audit authority), putting federal funding in jeopardy.

To draw an important distinction, this federal right to audit is different than the other provisions in subpart D regarding “lookback” periods. These generally address affirmative obligations upon *providers* to identify and self-attest to any improper billing activity. They do not govern the right to audit for state Medicaid programs. Those requirements are clearly set forth in 42 CFR 438.3(h) and are the basis upon which OHA complies with its obligations under the Oregon Medicaid State Plan.

4028 entitles a provider to a “revised audit” if they disagree with findings

HB 4028 entitles a provider to a “revised audit” if the provider “has reason to believe” that OHA or the CCO “based the finding of error on an incorrect provision of law.” Under current law, providers can challenge audits on the basis that they believe OHA has misapplied the law by requesting a contested case hearing. Current rules require OHA to provide a preliminary report that the provider can respond to and make arguments. HB 4028 provide an alternative challenge method that is both unnecessary and complicates existing processes. HB 4028 provides no guidance for when the provider and OHS disagree; however, because all such issues can be resolved in the established appeal process, this provision is unnecessary and will create conflict and uncertainty for both providers and OHA.

Timelines

HB 4028 requires all audits be finished within 180 days, even if OHA has requested records from the provider, without consideration of the time providers need to respond or the time needed to review the records once provided. This could reduce the number of audits OHA could have in process at any one time.

Please do not hesitate to reach out if there are any further questions. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Rochelle Layton". The signature is written in a cursive, flowing style.

Rochelle Layton, Chief Financial Officer