



## Political Action Committee

Dear Chair Patterson and Members of the Senate Committee on Health Care,

As the Director of the Oregon Mental Health Providers PAC, and the original co-author of HB 4028, I have already submitted testimony for this bill. I appreciate the opportunity to respond to the Oregon Health Authority's (OHA) concerns regarding HB 4028-A. While OHA raises several federal compliance and administrative concerns, these claims reflect an overly broad interpretation of federal requirements and do not justify maintaining Oregon's current audit practices, which lack reasonable safeguards for providers.

HB 4028 is carefully designed to establish reasonable procedural protections for providers while maintaining full compliance with federal Medicaid law.

Below is a clarification of key issues.

### **1. Federal Record Retention Requirements Do Not Require Unlimited Audit Authority**

OHA asserts that 42 CFR 431.107 requires providers to maintain and furnish records without any time limitation and implies that HB 4028 would conflict with this requirement.

This interpretation is incorrect.

42 CFR 431.107 requires providers to maintain and furnish records upon request; however, the regulation does not mandate that state Medicaid agencies maintain unlimited audit authority or prohibit states from establishing reasonable procedural limits on audit practices. Federal law establishes minimum program integrity requirements, while states retain authority to define administrative procedures, including reasonable timelines for audits.

States routinely establish audit timeframes and procedural safeguards without jeopardizing federal compliance or funding. HB 4028 regulates audit processes — not record retention obligations — and therefore does not conflict with federal requirements.

Importantly, nothing in HB 4028 prevents providers from maintaining records or furnishing records when requested. The bill simply establishes reasonable limits on when and how audits may be conducted to ensure fairness, predictability, and due process.

## **2. 42 CFR 438.3(h) Does Not Require Unlimited State Audit Lookback Periods**

OHA also cites 42 CFR 438.3(h), which provides that Medicaid agencies and federal officials may inspect and audit records of managed care entities and subcontractors.

However, this provision establishes federal oversight authority and contract compliance requirements — it does not mandate that states exercise the full extent of this authority or prohibit states from adopting reasonable administrative limitations on audit practices.

The 10-year audit provision referenced applies to contractual audit rights related to managed care entities and does not require state Medicaid programs to conduct provider audits without procedural safeguards or time limitations. Federal law frequently establishes maximum permissible oversight authority while allowing states discretion in implementation.

HB 4028 does not eliminate OHA's authority to audit, nor does it restrict federal oversight. It simply establishes reasonable parameters for the state's exercise of that authority.

States retain broad discretion to structure administrative procedures governing audits, and reasonable time limits are consistent with principles of fairness, administrative efficiency, and due process.

## **3. HB 4028 Supports Program Integrity by Improving Audit Accuracy and Preserving Existing Oversight Practices**

OHA suggests that limiting audit timelines or circumstances could reduce oversight capacity. This concern does not reflect how audits are currently conducted or how HB 4028 operates.

In practice, routine provider audits typically review a defined sample period — commonly approximately six months of records. When audit findings raise concerns suggesting fraud or intentional misconduct, OHA already retains authority to expand the review period and conduct more extensive investigations.

HB 4028 does not alter this existing practice. The bill preserves OHA's authority to extend audit scope where fraud or intentional wrongdoing is suspected. Rather, the bill establishes reasonable parameters for routine audits to ensure fairness, predictability, and timely resolution.

It is also important to distinguish between the **scope of records reviewed during an audit** and the **length of the audit lookback period**. Routine audits reviewing approximately six months of records remain the same regardless of whether the allowable lookback period is four years or ten years. The length of the lookback window does not affect OHA's ability to conduct a six-month file review, nor does it reduce oversight capacity. HB 4028 therefore does not interfere with standard audit methodology.

Extended audit lookback periods can also reduce audit reliability. As records age, documentation standards change, staff turnover occurs, and clinical and billing practices evolve. Federal program integrity guidance emphasizes the importance of timely, reliable documentation and accurate record review in audit determinations. The Centers for Medicare & Medicaid Services (CMS) Program Integrity Manual instructs reviewers to ensure documentation supports services and reflects applicable standards at the time services were rendered (CMS Pub. 100-08, Medicare Program Integrity Manual, Ch. 3, §§ 3.2.3.3 and 3.3.2.4). CMS guidance further recognizes that audit effectiveness depends on accurate and complete medical documentation and consistent application of coverage requirements (CMS Pub. 100-08, Ch. 3).

Reviews of significantly older records increase the likelihood of administrative error, misinterpretation of documentation, and inconsistent application of standards. Reasonable time limits therefore support audit accuracy and program integrity rather than weakening oversight.

Reasonable audit parameters improve program integrity by:

- ensuring audits rely on timely and reliable documentation
- reducing administrative errors caused by reviewing outdated records
- improving audit accuracy and consistency
- preventing retroactive reinterpretation of billing requirements
- allowing providers to focus resources on compliance rather than indefinite audit exposure

Unbounded audit authority does not strengthen program integrity; it increases administrative burden, increases error rates, and undermines provider participation in

Medicaid. By maintaining current oversight tools while establishing clear procedural safeguards, HB 4028 supports both accountability and fairness.

#### **4. Revised Audit Process Addresses Documented Administrative Practices and Protects Due Process**

OHA asserts that HB 4028's revised audit provision is unnecessary because providers may request contested case hearings under current law. This characterization does not reflect the practical realities providers experience in the audit process.

In practice, OHA and coordinated care organizations (CCOs) have repeatedly applied Oregon Revised Statutes (ORS) provisions specific to Coordinated Care Organizations when auditing individual providers, regardless of whether those statutes apply to the provider being audited. Providers are then required to identify and challenge the misapplication of law themselves.

When providers have requested revised audits based on the application of incorrect legal standards, they have been informed that such review constitutes their single opportunity for audit reconsideration. In multiple instances, providers have sought review of additional clear factual or legal errors identified after the initial challenge and were denied further review on the basis that only one review was permitted.

This practice places the burden on providers to identify legal errors within complex audit findings under significant time constraints and limits their ability to correct multiple or subsequently discovered errors. The result is an audit process that lacks meaningful procedural safeguards and risks enforcement based on incorrect legal standards.

HB 4028's revised audit provision is intended to correct this unfair practice by ensuring that findings based on incorrect law or clear error can be meaningfully reviewed and corrected before escalation to formal litigation. This promotes accuracy, fairness, and administrative efficiency.

Administrative law principles favor accessible mechanisms for correcting agency error prior to contested case proceedings. Providing a clear process for revised audit review improves accuracy, reduces unnecessary litigation, and strengthens confidence in program oversight.

This provision supplements — rather than replaces — existing appeal rights and ensures that audit determinations are based on the correct legal authority.

## **5. Audit Completion Timelines Promote Efficiency and Accountability**

OHA expresses concern that HB 4028 requires audits to be completed within 180 days.

Reasonable completion timelines are standard administrative practice across regulatory systems and promote efficient use of state resources. The bill does not prevent OHA from requesting records or conducting thorough reviews; it simply requires timely resolution once an audit is initiated.

Open-ended audit processes create prolonged uncertainty for providers, interfere with business operations, and delay resolution of alleged billing issues. Establishing predictable timelines improves administrative accountability and supports timely program oversight.

If additional time is necessary due to provider response delays or extraordinary circumstances, reasonable procedural mechanisms may be adopted without eliminating the importance of defined timelines.

## **6. Federal Funding Risk Claims Are Speculative**

OHA suggests that HB 4028 could place Oregon's federal Medicaid funding at risk. However, no specific federal guidance or enforcement precedent has been identified demonstrating that reasonable state limits on audit procedures violate federal Medicaid requirements.

Many states maintain defined audit lookback periods and procedural safeguards while remaining fully compliant with federal law. The assertion of federal funding risk appears speculative rather than based on established federal enforcement standards.

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## **Conclusion**

HB 4028 establishes balanced and reasonable procedural protections that support provider participation, improve audit accuracy, and maintain full compliance with federal Medicaid requirements. The bill does not eliminate audit authority, weaken program integrity, or conflict with federal law.

Rather, it ensures that Oregon's audit system operates in a manner that is fair, predictable, and administratively sound.

We respectfully urge continued consideration of HB 4028 as a necessary modernization of Oregon's Medicaid audit practices.

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**Conclusion**

HB 4028 preserves program integrity while restoring balance, transparency, and fairness in the audit process. It aligns Oregon with national standards, protects behavioral health access, and supports providers' ability to serve Oregon communities without weakening fraud enforcement.

I respectfully urge the Committee to support HB 4028.

Thank you for your time and consideration.

Sincerely,

Tiffany Kettermann  
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Director, Oregon Mental Health Providers PAC