
SUBSTITUTE SENATE BILL 5880

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kilmer, Kastama, Swecker, Roach, Keiser and Delvin)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to the department of social and health services'
2 technical assistance and audit program for pharmacy payments; amending
3 RCW 74.09.200; adding new sections to chapter 74.09 RCW; and creating
4 new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 74.09.200 and 1979 ex.s. c 152 s 1 are each amended to
7 read as follows:

8 (1) The legislature finds and declares it to be in the public
9 interest and for the protection of the health and welfare of the
10 residents of the state of Washington that a proper regulatory and
11 inspection program be instituted in connection with the providing of
12 medical, dental, and other health services to recipients of public
13 assistance and medically indigent persons. In order to effectively
14 accomplish such purpose and to assure that the recipient of such
15 services receives such services as are paid for by the state of
16 Washington, the acceptance by the recipient of such services, and by
17 practitioners of reimbursement for performing such services, shall
18 authorize the secretary of the department of social and health services

1 or his designee, to inspect and audit all records in connection with
2 the providing of such services.

3 (2) It is the intent of the legislature that the regulatory and
4 inspection program authorized in this section shall include:

5 (a) A technical assistance program to identify pharmacies that
6 could benefit from technical assistance from the department with regard
7 to billing for payment, and to provide that assistance; and

8 (b) A systematic method to gather data for program improvement.

9 NEW SECTION. Sec. 2. A new section is added to chapter 74.09 RCW
10 to read as follows:

11 (1) The secretary or his or her authorized representative shall
12 develop and implement a program of technical assistance to pharmacies
13 providing services under this chapter that:

14 (a) Offers education to pharmacies regarding compliance with the
15 payment requirements for programs under this chapter; and

16 (b) Offers technical assistance to pharmacies that request such
17 assistance or who, as identified in a prepayment or other preaudit
18 review, would benefit from such assistance.

19 (2) The department may order a pharmacy to comply with a corrective
20 plan if, during technical assistance or prepayment or other preaudit
21 review, a pattern of technical deficiencies is identified. If the
22 pharmacy fails to comply with the corrective plan, the pharmacy may be
23 referred for audit under this chapter.

24 (3) The department shall develop a plan to incorporate into the
25 provider payment system, by January 1, 2009, system capability to
26 identify and report a pattern of technical deficiencies by pharmacies
27 in making payment claims. Technical deficiencies identified by this
28 system may be used to determine pharmacies to which technical
29 assistance will be offered. The department must report to the
30 appropriate committees of the legislature by January 1, 2008, and
31 September 1, 2008, on the progress made to implement this system
32 requirement.

33 (4) As used in this section, "technical deficiency" means the same
34 as defined in section 3 of this act.

35 NEW SECTION. Sec. 3. A new section is added to chapter 74.09 RCW
36 to read as follows:

1 (1) Audits under this chapter of the records of pharmacies licensed
2 under chapter 18.64 RCW are subject to the following:

3 (a) The period covered by the audit may not exceed one year from
4 the date a claim was submitted to the department for payment unless the
5 department has evidence of sustained payment error or a pharmacy has
6 failed to follow corrective action from a previous audit, in which case
7 the department may look back as far as necessary to determine the
8 degree of payment error;

9 (b) Entities conducting audits pursuant to a contract with the
10 department must maintain an office within this state as a point of
11 contact for pharmacies being audited;

12 (c) An initial audit may not commence earlier than thirty days
13 prior to the date on which notice of the audit is given to the
14 pharmacy. The notice must be provided to the physical location at
15 which the audit will be conducted and to the principal office or place
16 of business of the pharmacy, if different, and must include the name,
17 Washington office address, and telephone number of any contractor
18 conducting the audit pursuant to a contract with the department. Audit
19 findings resulting from audit work that is commenced before the thirty-
20 day period may not be used in any audit findings;

21 (d)(i) Except as provided in (d)(ii) of this subsection, technical
22 deficiencies may not be the basis for finding an overpayment if the
23 pharmacy can substantiate through documentation that the services or
24 goods were provided to the recipient and that the technical deficiency
25 did not adversely affect direct patient care of the recipient, unless
26 recoupment of the payment is specifically mandated in state or federal
27 law or rule or failure to recoup payment will result in the loss of
28 federal matching funds or other penalty against the state; and

29 (ii) In response to an audit finding technical deficiencies,
30 including a pattern of noncompliance with technical requirements, the
31 department may order the pharmacy to comply with a corrective plan. If
32 the pharmacy fails to comply with the corrective plan, action to recoup
33 overpayments may be taken based on technical deficiencies;

34 (e) An audited pharmacy may use the written records of a hospital,
35 physician, or other authorized pharmacy to validate the audited
36 pharmacy's record;

37 (f) Extrapolation may not be used to determine overpayment amounts
38 to be recovered by recoupment, offset, or otherwise, unless the

1 secretary determines that there is a sustained or high level of payment
2 error or documented technical assistance has failed to correct the
3 payment error;

4 (g) The pharmacy must be given at least: (i) Sixty days from the
5 date that the on-site audit is complete to provide missing files or
6 records; and (ii) ninety days from the date on which the draft audit
7 findings were delivered to the pharmacy to respond with additional
8 documentation or other relevant information. Extensions of these time
9 periods shall be granted for good cause; and

10 (h) A final audit report must be delivered to the pharmacy within
11 one hundred eighty days after delivering a draft audit report to the
12 pharmacy or after the close of a dispute conference, whichever occurs
13 later. If extensions of time are granted to the pharmacy under (g) of
14 this subsection, the time period for delivery of the final audit report
15 shall include the additional days allowed for the extension. An audit
16 report delivered after the time period specified in this subsection
17 must be deemed to be a draft audit report.

18 (2) The department shall remit any overpayments, fines, and
19 interest recovered from pharmacy audits to the state's health services
20 account. The federal government's share of recovered overpayments
21 shall be repaid immediately.

22 (3) This section does not apply to an audit that is based on an
23 investigation for fraudulent or abusive practices under RCW 74.09.210.

24 (4) For the purposes of this section:

25 (a) "Draft audit report" includes any audit which contains findings
26 not previously contained in an audit report delivered to the pharmacy.

27 (b) "Technical deficiency" means an error or omission in
28 documentation by a pharmacy that does not affect direct patient care
29 of, or receipt of services by, the recipient, but does not include:

30 (i) Lack of medical necessity or failure to document medical
31 necessity in a manner that meets professionally recognized applicable
32 standards of care;

33 (ii) Failure to provide care of a quality that meets professionally
34 recognized standards of care;

35 (iii) Failure to routinely obtain prior authorization of the
36 service if required under this chapter or rules adopted under this
37 chapter; or

1 (iv) Fraud, a pattern of abusive billing or noncompliance, or a
2 gross or flagrant violation.

3 NEW SECTION. **Sec. 4.** The secretary of the department of social
4 and health services may adopt rules as necessary to implement this act.

5 NEW SECTION. **Sec. 5.** Section 3 of this act applies retroactively
6 to audits commenced by the department of social and health services
7 under chapter 74.09 RCW on or after April 1, 2007.

8 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
9 conflict with federal requirements that are a prescribed condition to
10 the allocation of federal funds to the state, the conflicting part of
11 this act is inoperative solely to the extent of the conflict and with
12 respect to the agencies directly affected, and this finding does not
13 affect the operation of the remainder of this act in its application to
14 the agencies concerned. Rules adopted under this act must meet federal
15 requirements that are a necessary condition to the receipt of federal
16 funds by the state.

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