

**Health & Human Services  
Appropriations Committee**

**HB 2633**

**Brief Description:** Concerning the department of social and health services' audit program for pharmacy payments.

**Sponsors:** Representatives Seaquist, Short, Pearson, Schmick, Morrell and Kretz.

**Brief Summary of Bill**

- Establishes requirements to regulate non-fraud audits of pharmacy providers under state medical assistance programs.

**Hearing Date:** 2/2/10

**Staff:** Erik Cornellier (786-7116).

**Background:**

State medical assistance programs pay for health care for low-income state residents, primarily through the Medicaid program. The majority of these programs are administered by the Department of Social and Health Services (DSHS). Most of these programs are jointly funded with state and federal matching funds.

Audits of Providers Under State Medical Assistance Programs.

*Statutory Audit Requirements.*

The DSHS is authorized to conduct audits and investigations of providers of health services to beneficiaries under the state medical assistance programs that it administers. To discover the provider's usual or customary charges, the DSHS may examine random representative records as necessary to show accounts billed and received. If an overpayment is discovered, it may be offset by underpayments also discovered in the same audit sample.

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If an audit shows an overpayment, the DSHS must give notice to the provider demanding that the overpayment be paid within 20 days. The provider may request a hearing if the request is filed within 28 days of the notice.

#### *Audit Requirements Under DSHS Rules.*

Providers must enter into agreements with DSHS to be approved as a provider. They must keep legible, accurate, and complete records to justify the services for which payment is claimed. Records must be available for six years from the date of service, unless state or federal law requires a longer period. Providers are to be given 20 days advance notice of an audit. Audits may be conducted either on-site or by a desk audit. They may be performed on a per-claim basis or by using a probability sample. If a sample is used, it must meet recognized and generally accepted sampling methods and must ensure a minimum 95 percent confidence level when projecting an overpayment.

On completion of an audit, the provider has 30 days to locate and provide any missing records. After the 30 day period, a draft audit report is issued. Within 45 days, unless the time is extended, the provider may comment on the draft audit report or submit additional information. A dispute conference may also be requested. A final audit report may be appealed as provided by law.

#### Federal Audit Requirements for Medicaid.

Federal law requires each state administering a Medicaid program to establish and maintain an adequate internal control structure to ensure that Medicaid is administered in compliance with federal law. This control structure must be part of the approved state plan required to receive federal funding. Various government audit requirements establish the standards that the state must meet, including ensuring the propriety of expenditures reported for federal matching funds.

State auditors also review Medicaid expenditures annually under the federal Single Audit Act of 1984. States must ensure both proper payment and recovery of overpayments for unallowable claims.

#### Health Services Account.

In 2009 the Health Services Account was eliminated and consolidated into the State General Fund.

### **Summary of Bill:**

#### Intent.

The Legislature's stated intent is that the DSHS shall have regulatory and audit programs for health services providers that include a systematic method to gather data for program improvement.

## Pharmacy Audit Program.

Various changes are made in procedures for pharmacy non-fraud audits.

### *Audit Periods.*

The DSHS is currently able to look back six years when performing audits. The new time period that audits may cover decreases to three years from when claims were submitted beginning in fiscal year (FY) 2010, two years from when claims were submitted starting in FY 2011, and one year from when claims were submitted in FY 2012. After FY 2012, audits cannot examine claims submitted more than one year ago unless the DSHS has evidence of a sustained payment error. In that case, the DSHS may look back as far as necessary to determine the degree of payment error.

### *Auditor Locations and Hours.*

Contracted auditors must maintain an office in Washington or have established hours in Pacific Standard Time.

### *Notice.*

The DSHS cannot begin an audit without 30 days written notice provided to the physical location where the audit will be conducted and to the principle place of business of the pharmacy. Notice must include the name, office address, and telephone number of the contractor conducting the audit.

### *Technical Deficiencies.*

Technical deficiencies, such as errors in documentation that do not affect patient care or receipt of services, may not be used as a basis to find overpayments unless recoupment of the payment is required by law or failure to recoup the payment will result in loss of federal funding. However, providers with technical deficiencies are subject to corrective plans, and recoupment action may be taken for failure to comply with the plans.

An audited pharmacy may use documentation from other providers to validate the pharmacy's record.

### *Use of Sampling Techniques.*

Auditors may not use extrapolation from a sample of records to calculate the amount of an overpayment unless the DSHS determines that there is a sustained high level of payment error or technical assistance fails to correct the payment error.

### *Timelines.*

A pharmacy must be given at least 90 days to respond to a draft audit, with extensions granted for good cause. The DSHS must deliver a final audit report within 180 days after the later of the

delivery of the draft audit report or the close of a dispute conference. Otherwise, the audit report is deemed to be a draft audit report.

*Remittance of Overpayments.*

The DSHS must remit recovered overpayments to the Health Services Account, and the DSHS must repay the federal government's share of overpayments immediately.

Rules.

The Secretary may adopt rules to implement the technical assistance and audit provisions.

Conflict with Federal Requirements.

Any part of the act that conflicts with requirements for allocation of federal funds is inoperative to the extent of the conflict. Rules adopted under the act must meet requirements for receipt of federal funds.

**Appropriation:** None.

**Fiscal Note:** Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.