

# HOUSE BILL REPORT

## ESHB 1737

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### As Amended by the Senate

**Title:** An act relating to the department of social and health services' audit program for pharmacy payments.

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

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Short, Seaquist and Schmick).

#### **Brief History:**

##### **Committee Activity:**

Health Care & Wellness: 2/14/11, 2/17/11 [DPS];

Health & Human Services Appropriations & Oversight: 2/18/11, 2/21/11 [DPS(HCW)].

##### **Floor Activity:**

Passed House: 3/4/11, 96-0.

Senate Amended.

Passed Senate: 4/11/11, 47-0.

House Refused to Concur.

Senate Amended.

Passed Senate: 4/21/11, 47-0.

#### **Brief Summary of Engrossed Substitute Bill**

- Establishes standards for pharmacy audits under the medical care services programs as related to notice, supplemental documentation, and audit findings.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Cody, Chair; Jenkins, Vice Chair; Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey, Clibborn, Green, Harris, Kelley, Moeller and Van De Wege.

**Staff:** Chris Blake (786-7392).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS & OVERSIGHT

**Majority Report:** The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Dickerson, Chair; Appleton, Vice Chair; Johnson, Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Cody, Green, Harris, Kagi, Overstreet, Pettigrew and Walsh.

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

### **Background:**

State medical assistance programs pay for health care for low-income state residents, primarily through the Medicaid program. 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.

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 the 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. Audits may be conducted either on-site or by a desk audit or a combination of the two. Providers are to be given 10 days advance notice of an on-site 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 30 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.

### **Summary of Engrossed Substitute Bill:**

Audits of pharmacy records performed by the Department of Social and Health Services (DSHS) under its administration of the medical care services programs must meet certain standards related to notice of an audit, supplemental documentation, and audit findings.

- Initial audits may not begin earlier than 30 days prior to the date that notice of the audit was provided to the pharmacy. Audit results that violate this may not be used in any audit findings.
- An audited pharmacy may use the written records of a hospital, physician, or other pharmacy to validate its records. An audited pharmacy must have at least 90 days from the delivery of the draft audit findings to respond with additional documentation.
- A finding of overpayment may not be based upon technical deficiencies if the pharmacy can demonstrate through documentation that the claim meets the definition of an allowable cost. A "technical deficiency" is a billing error or omission that does not affect any element of an allowable cost. "Technical deficiencies" do not include failure to routinely obtain prior authorization; failure to properly document expedited prior authorization; or fraud, patterns of abusive billing or noncompliance, continuous violations, or gross or flagrant violations. An "allowable cost" is a medical cost that is covered by the state's Medicaid plan, supported by medical records as having been provided and being consistent with the medical diagnosis, is properly coded, and is paid at the allowed rate. In determining whether or not the pharmacy has provided adequate records to indicate that services were consistent with a medical diagnosis, the DSHS must consider the record according to that which a reasonable pharmacy would be expected to maintain.

The act applies retroactively to audits that the DSHS began on or after April 1, 2011.

It is the stated intent of the Legislature that the DSHS's regulatory and inspection program include a systemic method for gathering data for program improvement.

### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment declares the Legislature's intent that inspection and auditing standards for Medicaid be construed consistently with federal standards to avoid the loss of federal funding or repayment obligations and directs the Department of Social and Health Services (DSHS) to construe the act in that way.

The Senate amendment removes the requirement that the DSHS, when determining a pharmacy's compliance with allowable cost requirements, consider the record requirement according to what a reasonable pharmacy would be expected to maintain.

The Senate amendment allows an audited pharmacy to use any records, rather than only written records, of a hospital, physician, or other pharmacy to validate records.

The Senate amendment prohibits the use of technical deficiencies as a basis to appeal third-party liability audit findings.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony (Health Care & Wellness):**

(In support) This bill has been pared down from what it had been in previous years. The approval of records for use in an audit can be very subjective. If a pharmacy can show that they provided the right prescription to the right person, the agency should accept that and provide payment to the pharmacist. This bill will not damage the state. The Department of Social and Health Services (DSHS) should not be allowed to recoup money that does not belong to it. There is no accountability or oversight from the DSHS and it does not abide by its own guidelines. The DSHS's computer system allows claims that it should not allow for because different parts of the DSHS do not communicate with each other. The DSHS audits are time-intensive and cover large amounts records for both the pharmacy and the agency.

(Opposed) Documentation is a necessary component of all audits because it shows that services or supplies were ordered, medically necessary, and received. In the absence of complete documentation the DSHS would never be able to establish that services were allowable. If the pharmacy audit standards differ from the other audits that the DSHS does for other providers, those providers could raise equal protection claims. Under the Affordable Care Act there is increased attention to Medicaid's ability to assure that appropriate payments are made and those federal rules require that the provider maintain adequate records.

**Staff Summary of Public Testimony (Health & Human Services Appropriations & Oversight):**

(In support) None.

(Opposed) None.

**Persons Testifying** (Health Care & Wellness): (In support) Representative Short, prime sponsor; Dedi Hitchens, Washington Pharmacy Association; and Julie Akers, Everett Clinic and Bartell Drugs.

(Opposed) Cathie Ott, Department of Social and Health Services.

**Persons Testifying** (Health & Human Services Appropriations & Oversight): None.

**Persons Signed In To Testify But Not Testifying** (Health Care & Wellness): None.

**Persons Signed In To Testify But Not Testifying** (Health & Human Services Appropriations & Oversight): None.