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HOUSE BILL 1975

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State of Washington

53rd Legislature

1993 Regular Session

By Representatives Dunshee and Locke; by request of Department of Social and Health Services

Read first time 02/19/93. Referred to Committee on Appropriations.

1 AN ACT Relating to nursing home reimbursement overpayments;  
2 amending RCW 74.46.640 and 74.46.690; and declaring an emergency.

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

4 **Sec. 1.** RCW 74.46.640 and 1983 1st ex.s. c 67 s 34 are each  
5 amended to read as follows:

6 (1) Payments to a contractor may be withheld by the department in  
7 each of the following circumstances:

8 (a) A required report is not properly completed and filed by the  
9 contractor within the appropriate time period, including any approved  
10 extension. Payments will be released as soon as a properly completed  
11 report is received;

12 (b) State auditors, department auditors, or authorized personnel in  
13 the course of their duties are refused access to a nursing ((home))  
14 facility or are not provided with existing appropriate records.  
15 Payments will be released as soon as such access or records are  
16 provided;

17 (c) A refund in connection with a settlement or rate adjustment is  
18 not paid by the contractor when due. The amount withheld will be  
19 limited to the unpaid amount of the refund; ((and))

1 (d) Payment for the final (~~thirty~~) sixty days of service under a  
2 contract will be held in the absence of adequate alternate security  
3 acceptable to the department pending final settlement when the contract  
4 is terminated; and

5 (e) Payment for services at any time during the contract period in  
6 the absence of adequate alternate security acceptable to the  
7 department, if a nursing facility's medicaid overpayment liability, as  
8 determined by preliminary or final settlement or both, reaches or  
9 exceeds fifty thousand dollars, whether subject to a good faith dispute  
10 or not, and for each subsequent increase in liability reaching or  
11 exceeding twenty-five thousand dollars. Payments will be released as  
12 soon as acceptable security is provided or refund to the department is  
13 made.

14 (2) No payment will be withheld until written notification of the  
15 suspension is provided to the contractor, stating the reason  
16 (~~therefor~~) for the withholding, except that a request for  
17 administrative review or appeal of a suspension of payment, if  
18 available to the contractor and not already exhausted, shall not delay  
19 suspension of payment pending the outcome of the review or appeal.

20 **Sec. 2.** RCW 74.46.690 and 1985 c 361 s 3 are each amended to read  
21 as follows:

22 (1) When a facility contract is terminated for any reason, the old  
23 contractor shall submit final reports as required by RCW 74.46.040.

24 (2) Upon notification of a contract termination, the department  
25 shall determine by preliminary or final settlement calculations the  
26 amount of any overpayments made to the contractor, including  
27 overpayments disputed by the contractor. If preliminary or final  
28 settlements are unavailable for any period up to the date of contract  
29 termination, the department shall make a reasonable estimate of any  
30 overpayment or underpayments for such periods. The reasonable estimate  
31 shall be based upon prior period settlements, available audit findings,  
32 the projected impact of prospective rates, and other information  
33 available to the department.

34 (3) The old contractor shall provide security, in a form deemed  
35 adequate by the department, in the amount of determined and estimated  
36 overpayments, whether or not the overpayments are the subject of good  
37 faith dispute. Security shall consist of:

38 (a) Withheld payments due the contractor; or

1 (b) A surety bond issued by a bonding company acceptable to the  
2 department; or

3 (c) An assignment of funds to the department; or

4 (d) Collateral acceptable to the department; or

5 (e) A purchaser's assumption of liability for the prior  
6 contractor's overpayment; or

7 (f) A promissory note secured by a deed of trust; or

8 (g) Any combination of (a), (b), (c), (d), (~~e~~) (e), or (f) of  
9 this subsection.

10 (4) A surety bond or assignment of funds shall:

11 (a) Be at least equal in amount to determined or estimated  
12 overpayments, whether or not the subject of good faith dispute, minus  
13 withheld payments;

14 (b) Be issued or accepted by a bonding company or financial  
15 institution licensed to transact business in Washington state;

16 (c) Be for a term sufficient to ensure effectiveness after final  
17 settlement and the exhaustion of administrative and judicial remedies:  
18 PROVIDED, That the bond or assignment shall initially be for a term of  
19 five years, and shall be forfeited if not renewed thereafter in an  
20 amount equal to any remaining overpayment in dispute;

21 (d) Provide that the full amount of the bond or assignment, or  
22 both, shall be paid to the department if a properly completed final  
23 cost report is not filed in accordance with this chapter, or if  
24 financial records supporting this report are not preserved and made  
25 available to the auditor; and

26 (e) Provide that an amount equal to any recovery the department  
27 determines is due from the contractor at settlement, but not exceeding  
28 the amount of the bond and assignment, shall be paid to the department  
29 if the contractor does not pay the refund within sixty days following  
30 receipt of written demand or the conclusion of administrative or  
31 judicial proceedings to contest settlement issues.

32 (5) The department shall release any payment withheld as security  
33 if alternate security is provided under subsection (3) of this section  
34 in an amount equivalent to determined and estimated overpayments.

35 (6) If the total of withheld payments, bonds, and assignments is  
36 less than the total of determined and estimated overpayments, the  
37 unsecured amount of such overpayments shall be a debt due the state and  
38 shall become a lien against the real and personal property of the  
39 contractor from the time of filing by the department with the county

1 auditor of the county where the contractor resides or owns property,  
2 and the lien claim has preference over the claims of all unsecured  
3 creditors.

4 (7) The contractor shall file a properly completed final cost  
5 report in accordance with the requirements of this chapter, which shall  
6 be audited by the department. A final settlement shall be determined  
7 within ninety days following completion of the audit process, including  
8 any administrative review of the audit requested by the contractor.

9 (8) Following determination of settlement for all periods, security  
10 held pursuant to this section shall be released to the contractor after  
11 overpayments determined in connection with final settlement have been  
12 paid by the contractor. If the contractor contests the settlement  
13 determination in accordance with RCW 74.46.170, the department shall  
14 hold the security, not to exceed the amount of estimated unrecovered  
15 overpayments being contested, pending completion of the administrative  
16 appeal process.

17 (9) If, after calculation of settlements for any periods, it is  
18 determined that overpayments exist in excess of the value of security  
19 held by the state, the department may seek recovery of these additional  
20 overpayments as provided by law.

21 (10) If a contract is terminated solely in order for the same owner  
22 to contract with the department to deliver services to another  
23 classification of medical care recipients at the same facility, the  
24 contractor is not required to submit final cost reports, and security  
25 shall not be required.

26 (11) Regardless of whether a contractor intends to terminate its  
27 medicaid contract, if a facility's medicaid overpayment liability for  
28 one or more settlement periods reaches or exceeds fifty thousand  
29 dollars as determined by preliminary or final settlement, or both,  
30 whether subject to good faith dispute or not, the department shall  
31 demand and obtain security equivalent to such overpayment and for each  
32 subsequent increase in liability reaching or exceeding twenty-five  
33 thousand dollars. Such security shall meet the criteria in subsections  
34 (3) and (4) of this section, except that the department shall not  
35 accept an assumption of liability. The department shall withhold all  
36 or portions of a contractor's current contract payments or impose  
37 liens, or both, as authorized by subsection (6) of this section if  
38 security acceptable to the department is not forthcoming. The  
39 department shall release a contractor's withheld payments or lift

1 liens, or both, if the contractor subsequently provides security  
2 acceptable to the department. This subsection shall apply to all  
3 overpayments determined by preliminary or final settlements issued  
4 after the effective date of this act, regardless of what reimbursement  
5 periods the settlements may cover.

6 NEW SECTION. Sec. 3. This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and shall take  
9 effect immediately.

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