

# SENATE BILL REPORT

## SB 5880

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As Reported By Senate Committee On:  
Health & Long-Term Care, February 27, 2007

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

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

**Sponsors:** Senators Kilmer, Kastama, Swecker, Roach, Keiser and Delvin.

**Brief History:**

**Committee Activity:** Health & Long-Term Care: 2/21/07, 2/27/07 [DPS-WM].  
Ways & Means: 2/11/08.

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### SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

**Majority Report:** That Substitute Senate Bill No. 5880 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Franklin, Vice Chair; Pflug, Ranking Minority Member; Fairley, Kastama, Kohl-Welles and Parlette.

**Staff:** Rhoda Donkin (786-7465)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Elaine Deschamps (786-7441)

**Background:** The Department of Social and Health Services (DSHS) is authorized to inspect and audit all records in connection with state contracted services. Inspections and audits are not routinely scheduled for pharmacies because there are so many of them in the state. Audits are triggered by pharmacy data submitted to DSHS on claims and billing practices. It is current practice to use statistical sampling and overpayment projection as an auditing technique of payment practices by pharmacy providers.

There is concern among pharmacy providers in the state that current audit practices involve prolonged auditing periods, excessive reporting requirements, and inadequate notification.

**Summary of Bill:** The bill as referred to committee not considered.

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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.*

**SUMMARY OF BILL (Proposed Second Substitute):** DSHS must develop and implement a program of technical assistance to pharmacies, including education on compliance with payment requirements. This technical assistance is provided to any pharmacy that requests it or is identified as one who would benefit from such assistance.

The time period for the department to conduct audits is shortened from a three-year period, as is current practice, to a one-year period. This shorter audit coverage period is phased-in beginning fiscal year 2008 from a three year look-back period to a one-year look-back period beginning fiscal year 2010. After this time DSHS may only extend the look-back period in cases where there is evidence of sustained payment error, or a pharmacy's failure to follow a corrective action plan.

Technical deficiencies may not be the basis for finding an overpayment if the technical deficiency did not adversely affect direct patient care of the recipient and does not result in the loss of federal matching funds or other penalties against the state.

By January 1, 2010, DSHS must develop a plan to incorporate into the provider payment system the capability to identify and report patterns of technical deficiencies by pharmacies in making claims. The department must report to the legislature by January 1, 2009 and September 1, 2009, on the progress of implementing these system requirements.

Pharmacies are given 60 days after the end of an audit to provide missing records and 90 days to respond to a draft audit.

Notice of an audit must be provided to the site and to the principal office for the pharmacy, with the auditor's name, address, and phone number. Auditors under contract with DSHS must maintain an in-state office as a point of contact for pharmacies being audited.

The practice of extrapolation to determine overpayments is prohibited unless there is a high level of payment error, or documented technical assistance has failed to correct errors.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Proposed Second Substitute):** The period covered by a DSHS pharmacy audit is phased in from a three-year period to a one year period. The effective date for implementation of system capability to identify and report patterns of technical deficiencies by pharmacies in making claims is changed from January 2009 to January 2010. Reporting dates are changed from January and September 2008 to January and September 2009.

**EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE AS PASSED COMMITTEE (Recommended First Substitute):** The period covered by a pharmacy audit may not exceed one year. The department must remit any overpayments, fines, and interest recovered from pharmacy audits to the state's health services account.

Pharmacy audits can only look back one year, unless there is evidence of sustained payment error, or pharmacies do not comply with corrective actions. All overpayment, penalties, and interest resulting from pharmacy audits must be remitted to the Health Services Account.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Health & Long-Term Care):** PRO: The state's system for auditing pharmacy billing practices is unfair and has to change. Auditors require years of records, which take 100s of worker hours to produce. The audits use calculations for estimating overpayments that grossly overstate mistakes that may have been made. Most pharmacies are not trying to rip off the state. The billing system should be changed to deny payments that are not allowed, instead of paying them and then telling us years later they shouldn't have been paid and then billing us. The audit practices of the state have to be more timely and reasonable.

CON: Medicaid expenditures have gotten very high, and audit practices have responded. The state is required by federal law to find inaccurate billing practices, and the process involves using a method of extrapolating from actual claims. DSHS is improving its claims and billing system in the future.

**Persons Testifying (Health & Long-Term Care):** PRO: Ray Bond, Olympic Pharmacy; Bridgett Talbot, PharmaSave; Teri Ferreira, Everett Clinic; David Green, Safeway; Rich Lee, NE Washington Medical Group; Dedi Hitchens, Washington State Pharmacy.

CON: Doug Porter, DSHS.

**Staff Summary of Public Testimony (Ways & Means):** PRO: This is a much needed bill. We urge your support.

CON: We are in opposition to this bill, and have outlined our concerns in a prior memo; we are available to answer any questions.

**Persons Testifying (Ways & Means):** PRO: Dedi Hitchens, Washington State Pharmacy Association; Lis Houchens, National Association of Chain Drug Stores.

CON: Cathie Ott, DSHS Health and Recovery Service Administration.