
SENATE BILL 5726

State of Washington

53rd Legislature

1993 Regular Session

By Senator Rinehart; by request of Department of Social and Health Services

Read first time 02/10/93. Referred to Committee on Ways & Means.

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 to be 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 any 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,
38 jointly and severally, on the part of the contractor or any person,
39 corporation, partnership, organization, or other entity related to the

1 contractor by some ownership or control as defined in this chapter and
2 shall become a lien against the real and personal property of the
3 contractor or against the real and personal property of any person,
4 corporation, partnership, organization, or other entity related to the
5 contractor by some ownership or control as defined in this chapter from
6 the time of filing by the department with the county auditor of the
7 county where the contractor or related person, corporation,
8 partnership, organization, or other entity resides, does business, or
9 owns property, and the lien claim has preference over the claims of all
10 unsecured creditors.

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

16 (8) Following determination of settlement for all periods, security
17 held pursuant to this section shall be released to the contractor after
18 overpayments determined in connection with final settlement have been
19 paid by the contractor. If the contractor contests the settlement
20 determination in accordance with RCW 74.46.170, the department shall
21 hold the security, not to exceed the amount of estimated unrecovered
22 overpayments being contested, pending completion of the administrative
23 appeal process.

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

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

33 (11) Regardless of whether a contractor intends to terminate its
34 medicaid contract, if a facility's medicaid overpayment liability for
35 one or more settlement periods reaches or exceeds fifty thousand
36 dollars as determined by preliminary or final settlement, or both,
37 whether subject to good faith dispute or not, the department shall
38 demand and obtain security equivalent to such overpayment and for each
39 subsequent increase in liability reaching or exceeding twenty-five

1 thousand dollars. Such security shall meet the criteria in subsections
2 (3) and (4) of this section, except that the department shall not
3 accept an assumption of liability. The department shall withhold all
4 or portions of a contractor's current contract payments and/or impose
5 liens as authorized by subsection (6) of this section if security
6 acceptable to the department is not forthcoming. The department shall
7 release a contractor's withheld payments and/or lift liens if the
8 contractor subsequently provides security acceptable to the department.
9 This subsection shall apply to all overpayments determined by
10 preliminary or final settlements issued after the effective date of
11 this act, regardless of what reimbursement periods the settlements may
12 cover.

13 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and shall take
16 effect immediately.

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