
HOUSE BILL 2633

State of Washington 61st Legislature 2010 Regular Session

By Representatives Seaquist, Short, Pearson, Schmick, Morrell, and Kretz

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1 AN ACT Relating to the department of social and health services'
2 audit program for pharmacy payments; amending RCW 74.09.200; adding a
3 new section to chapter 74.09 RCW; and creating new sections.

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

5 **Sec. 1.** RCW 74.09.200 and 1979 ex.s. c 152 s 1 are each amended to
6 read as follows:

7 (1) The legislature finds and declares it to be in the public
8 interest and for the protection of the health and welfare of the
9 residents of the state of Washington that a proper regulatory and
10 inspection program be instituted in connection with the providing of
11 medical, dental, and other health services to recipients of public
12 assistance and medically indigent persons. In order to effectively
13 accomplish such purpose and to assure that the recipient of such
14 services receives such services as are paid for by the state of
15 Washington, the acceptance by the recipient of such services, and by
16 practitioners of reimbursement for performing such services, shall
17 authorize the secretary of the department of social and health services
18 or his designee, to inspect and audit all records in connection with
19 the providing of such services.

1 (2) It is the intent of the legislature that the regulatory and
2 inspection program authorized in this section shall include a
3 systematic method to gather data for program improvement.

4 NEW SECTION. Sec. 2. A new section is added to chapter 74.09 RCW
5 to read as follows:

6 (1) Audits under this chapter of the records of pharmacies licensed
7 under chapter 18.64 RCW are subject to the following:

8 (a) The period covered by the audit may not exceed three years from
9 the date a claim was submitted to the department for payment, beginning
10 fiscal year 2010. Beginning fiscal year 2011 the period covered may
11 not exceed two years from the date a claim was submitted to the
12 department for payment. Beginning fiscal year 2012 the covered period
13 may not exceed one year from the date a claim was submitted to the
14 department for payment. After fiscal year 2012 all claims may not
15 exceed one year from the date a claim was submitted to the department
16 unless the department has evidence of sustained payment error from
17 previous audit, in which case the department may look back as far as
18 necessary to determine the degree of payment error, except for claims
19 paid by medicare;

20 (b) Entities conducting audits pursuant to a contract with the
21 department must maintain an office within this state as a point of
22 contact for pharmacies being audited or have established hours in
23 Pacific time;

24 (c) An initial audit may not commence earlier than thirty days
25 prior to the date on which written notice of the audit is given to the
26 pharmacy. The notice must be provided to the physical location at
27 which the audit will be conducted and to the principal office or place
28 of business of the pharmacy, if different, and must include the name,
29 office address, and telephone number of any contractor conducting the
30 audit pursuant to a contract with the department. Audit findings
31 resulting from audit work that is commenced before the thirty-day
32 period may not be used in any audit findings;

33 (d)(i) Technical deficiencies may not be the basis for finding an
34 overpayment if the pharmacy can substantiate through documentation that
35 the services or goods were provided to the recipient and that the
36 technical deficiency did not adversely affect direct patient care of
37 the recipient, unless recoupment of the payment is specifically

1 mandated in state or federal law or rule or failure to recoup payment
2 will result in the loss of federal matching funds or other penalty
3 against the state; and

4 (ii) In response to an audit finding technical deficiencies,
5 including a pattern of noncompliance with technical requirements, the
6 department may order the pharmacy to comply with a corrective plan. If
7 the pharmacy fails to comply with the corrective plan, action to recoup
8 overpayments may be taken based on technical deficiencies;

9 (e) An audited pharmacy may use the written records of a hospital,
10 physician, or other authorized pharmacy to validate the audited
11 pharmacy's record;

12 (f) Extrapolation may not be used to determine overpayment amounts
13 to be recovered by recoupment, offset, or otherwise, unless the
14 secretary determines that there is a sustained or high level of payment
15 error or documented technical assistance has failed to correct the
16 payment error;

17 (g) The pharmacy must have at least ninety days from the date on
18 which the draft audit findings were delivered to the pharmacy to
19 respond with additional documentation or other relevant information.
20 Extensions of these time periods shall be granted for good cause; and

21 (h) A final audit report must be delivered to the pharmacy within
22 one hundred eighty days after delivering a draft audit report to the
23 pharmacy or after the close of a dispute conference, whichever occurs
24 later. If extensions of time are granted to the pharmacy under (g) of
25 this subsection, the time period for delivery of the final audit report
26 shall include the additional days allowed for the extension. An audit
27 report delivered after the time period specified in this subsection
28 must be deemed to be a draft audit report.

29 (2) The department shall remit any overpayments, fines, and
30 interest recovered from pharmacy audits to the state's health services
31 account. The federal government's share of recovered overpayments
32 shall be repaid immediately.

33 (3) This section does not apply to an audit that is based on an
34 investigation for fraudulent or abusive practices under RCW 74.09.210.

35 (4) For the purposes of this section:

36 (a) "Draft audit report" includes any audit which contains findings
37 not previously contained in an audit report delivered to the pharmacy.

1 (b) "Technical deficiency" means an error or omission in
2 documentation by a pharmacy that does not affect direct patient care
3 of, or receipt of services by, the recipient, but does not include:

4 (i) Failure to routinely obtain prior authorization of the service
5 if required under this chapter or rules adopted under this chapter; or

6 (ii) Fraud, a pattern of abusive billing or noncompliance, or a
7 gross or flagrant violation.

8 NEW SECTION. **Sec. 3.** The secretary of the department of social
9 and health services may adopt rules as necessary to implement this act.

10 NEW SECTION. **Sec. 4.** Section 2 of this act applies retroactively
11 to audits commenced by the department of social and health services
12 under chapter 74.09 RCW on or after April 1, 2010.

13 NEW SECTION. **Sec. 5.** If any part of this act is found to be in
14 conflict with federal requirements that are a prescribed condition to
15 the allocation of federal funds to the state, the conflicting part of
16 this act is inoperative solely to the extent of the conflict and with
17 respect to the agencies directly affected, and this finding does not
18 affect the operation of the remainder of this act in its application to
19 the agencies concerned. Rules adopted under this act must meet federal
20 requirements that are a necessary condition to the receipt of federal
21 funds by the state.

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