

ESHB 1737 - S AMD 393

By Senators Conway, Becker

ADOPTED 04/21/2011

1 Strike everything after the enacting clause and insert the
2 following:

3

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

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

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

22 (3) It is the intent of the legislature that the state's
23 inspection and auditing practices provide fairness and flexibility to
24 the providers of health services, while protecting the integrity of
25 the payment process and avoiding any liability on the part of the
26 state to federal programs. The legislature intends that inspection
27 and auditing standards in this chapter shall be construed in a manner

1 that is consistent with applicable federal standards to avoid the loss
2 of federal funding or repayment obligations to federal programs in
3 which the state participates.

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

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

9 (a) An initial audit may not commence earlier than thirty days
10 prior to the date on which written notice of the audit is given to the
11 pharmacy. The notice must be provided to the physical location at
12 which the audit will be conducted and to the principal office or place
13 of business of the pharmacy, if different, and must include the name,
14 office address, and telephone number of any contractor conducting the
15 audit pursuant to a contract with the department. Audit findings
16 resulting from audit work that is commenced before the thirty-day
17 period may not be used in any audit findings;

18 (b) Technical deficiencies may not be the basis for finding an
19 overpayment if the pharmacy can substantiate through documentation
20 that the claim for services complies with all of the elements of an
21 allowable cost, as provided in subsection (3) of this section;

22 (c) Technical deficiencies shall not be used as a basis to appeal
23 third-party-liability audit findings;

24 (d) An audited pharmacy may use the records of a hospital,
25 physician, or other authorized pharmacy to validate the audited
26 pharmacy's record; and

27 (e) The pharmacy must have at least ninety days from the date on
28 which the draft audit findings were delivered to the pharmacy to
29 respond with additional documentation or other relevant information.
30 Extensions of these time periods shall be granted for good cause.

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

33 (3) The provisions of this section shall be construed in a manner
34 that is consistent with applicable federal standards to avoid the loss

1 of federal funding and financial obligations to federal programs in
2 which the state participates.

3 (4) For the purposes of this section:

4 (a) "Technical deficiency" means a billing error or omission that
5 does not affect any elements of an allowable cost. "Technical
6 deficiency" does not include:

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

9 (ii) Failure to properly document expedited prior authorization
10 criteria; or

11 (iii) Fraud, a pattern of abusive billing, or noncompliance,
12 continuous violations, or a gross or flagrant violation.

13 (b) "Allowable cost" means a medical cost that is:

14 (i) Covered by the state plan and waivers;

15 (ii) Supported by the medical records indicating that the services
16 were provided and consistent with the medical diagnosis;

17 (iii) Properly coded; and

18 (iv) Paid at the rate allowed by the state plan.

19
20 NEW SECTION. **Sec. 3.** The secretary of the department of social
21 and health services may adopt rules as necessary to implement this
22 act.

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24 NEW SECTION. **Sec. 4.** Section 2 of this act applies retroactively
25 to audits commenced by the department of social and health services
26 under chapter 74.09 RCW on or after April 1, 2011.

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28 NEW SECTION. **Sec. 5.** If any part of this act is found to be in
29 conflict with federal requirements that are a prescribed condition to
30 the allocation of federal funds to the state or that establishes
31 repayment obligations on the part of the state, the conflicting part
32 of this act is inoperative solely to the extent of the conflict and
33 with respect to the agencies directly affected, and this finding does
34 not affect the operation of the remainder of this act in its

1 application to the agencies concerned. Rules adopted under this act
2 must meet federal requirements that are a necessary condition to the
3 receipt of federal funds by the state."

EFFECT:

Adds legislative intent that inspection and auditing standards be interpreted to be consistent with federal standards and to avoid the loss of federal funding.

Requires that the bill be construed to avoid the loss of federal funding and financial obligations to the federal government.

Prohibits technical deficiencies (billing error or omission) from being the basis of a finding of overpayment if the pharmacy demonstrates that the claim meets the definition of an allowable cost. Technical deficiencies shall not be used as a basis to appeal third-party-liability audit findings

Allows pharmacies to use any records, not just written records, of a hospital to support a claim.

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