
HOUSE BILL 1397

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By Representatives Green, Hinkle, Kelley, Schmick, Kagi, Armstrong, Seaquist, Kenney, Hurst, Harris, and Stanford

Read first time 01/20/11. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to requiring the state medicaid agency to establish
2 a competitive bid process for generic drug manufacturers; amending RCW
3 74.46.020; adding a new section to chapter 74.46 RCW; and creating a
4 new section.

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 medicaid generic drug competition and savings act.

8 **Sec. 2.** RCW 74.46.020 and 2010 1st sp.s. c 34 s 2 are each amended
9 to read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Appraisal" means the process of estimating the fair market
13 value or reconstructing the historical cost of an asset acquired in a
14 past period as performed by a professionally designated real estate
15 appraiser with no pecuniary interest in the property to be appraised.
16 It includes a systematic, analytic determination and the recording and
17 analyzing of property facts, rights, investments, and values based on
18 a personal inspection and inventory of the property.

1 (2) "Arm's-length transaction" means a transaction resulting from
2 good-faith bargaining between a buyer and seller who are not related
3 organizations and have adverse positions in the market place. Sales or
4 exchanges of nursing home facilities among two or more parties in which
5 all parties subsequently continue to own one or more of the facilities
6 involved in the transactions shall not be considered as arm's-length
7 transactions for purposes of this chapter. Sale of a nursing home
8 facility which is subsequently leased back to the seller within five
9 years of the date of sale shall not be considered as an arm's-length
10 transaction for purposes of this chapter.

11 (3) "Assets" means economic resources of the contractor, recognized
12 and measured in conformity with generally accepted accounting
13 principles.

14 (4) "Audit" or "department audit" means an examination of the
15 records of a nursing facility participating in the medicaid payment
16 system, including but not limited to: The contractor's financial and
17 statistical records, cost reports and all supporting documentation and
18 schedules, receivables, and resident trust funds, to be performed as
19 deemed necessary by the department and according to department rule.

20 (5) "Capitalization" means the recording of an expenditure as an
21 asset.

22 (6) "Case mix" means a measure of the intensity of care and
23 services needed by the residents of a nursing facility or a group of
24 residents in the facility.

25 (7) "Case mix index" means a number representing the average case
26 mix of a nursing facility.

27 (8) "Case mix weight" means a numeric score that identifies the
28 relative resources used by a particular group of a nursing facility's
29 residents.

30 (9) "Certificate of capital authorization" means a certification
31 from the department for an allocation from the biennial capital
32 financing authorization for all new or replacement building
33 construction, or for major renovation projects, receiving a certificate
34 of need or a certificate of need exemption under chapter 70.38 RCW
35 after July 1, 2001.

36 (10) "Contractor" means a person or entity licensed under chapter
37 18.51 RCW to operate a medicare and medicaid certified nursing

1 facility, responsible for operational decisions, and contracting with
2 the department to provide services to medicaid recipients residing in
3 the facility.

4 (11) "Default case" means no initial assessment has been completed
5 for a resident and transmitted to the department by the cut-off date,
6 or an assessment is otherwise past due for the resident, under state
7 and federal requirements.

8 (12) "Department" means the department of social and health
9 services (DSHS) and its employees.

10 (13) "Depreciation" means the systematic distribution of the cost
11 or other basis of tangible assets, less salvage, over the estimated
12 useful life of the assets.

13 (14) "Direct care" means nursing care and related care provided to
14 nursing facility residents. Therapy care shall not be considered part
15 of direct care.

16 (15) "Direct care supplies" means medical, pharmaceutical, and
17 other supplies required for the direct care of a nursing facility's
18 residents.

19 (16) "Entity" means an individual, partnership, corporation,
20 limited liability company, or any other association of individuals
21 capable of entering enforceable contracts.

22 (17) "Equity" means the net book value of all tangible and
23 intangible assets less the recorded value of all liabilities, as
24 recognized and measured in conformity with generally accepted
25 accounting principles.

26 (18) "Essential community provider" means a facility which is the
27 only nursing facility within a commuting distance radius of at least
28 forty minutes duration, traveling by automobile.

29 (19) "Facility" or "nursing facility" means a nursing home licensed
30 in accordance with chapter 18.51 RCW, excepting nursing homes certified
31 as institutions for mental diseases, or that portion of a multiservice
32 facility licensed as a nursing home, or that portion of a hospital
33 licensed in accordance with chapter 70.41 RCW which operates as a
34 nursing home.

35 (20) "Fair market value" means the replacement cost of an asset
36 less observed physical depreciation on the date for which the market
37 value is being determined.

1 (21) "Financial statements" means statements prepared and presented
2 in conformity with generally accepted accounting principles including,
3 but not limited to, balance sheet, statement of operations, statement
4 of changes in financial position, and related notes.

5 (22) "Generally accepted accounting principles" means accounting
6 principles approved by the financial accounting standards board (FASB)
7 or its successor.

8 (23) "Grouper" means a computer software product that groups
9 individual nursing facility residents into case mix classification
10 groups based on specific resident assessment data and computer logic.

11 (24) "High labor-cost county" means an urban county in which the
12 median allowable facility cost per case mix unit is more than ten
13 percent higher than the median allowable facility cost per case mix
14 unit among all other urban counties, excluding that county.

15 (25) "Historical cost" means the actual cost incurred in acquiring
16 and preparing an asset for use, including feasibility studies,
17 architect's fees, and engineering studies.

18 (26) "Home and central office costs" means costs that are incurred
19 in the support and operation of a home and central office. Home and
20 central office costs include centralized services that are performed in
21 support of a nursing facility. The department may exclude from this
22 definition costs that are nonduplicative, documented, ordinary,
23 necessary, and related to the provision of care services to authorized
24 patients.

25 (27) "Large nonessential community providers" means nonessential
26 community providers with more than sixty licensed beds, regardless of
27 how many beds are set up or in use.

28 (28) "Lease agreement" means a contract between two parties for the
29 possession and use of real or personal property or assets for a
30 specified period of time in exchange for specified periodic payments.
31 Elimination (due to any cause other than death or divorce) or addition
32 of any party to the contract, expiration, or modification of any lease
33 term in effect on January 1, 1980, or termination of the lease by
34 either party by any means shall constitute a termination of the lease
35 agreement. An extension or renewal of a lease agreement, whether or
36 not pursuant to a renewal provision in the lease agreement, shall be
37 considered a new lease agreement. A strictly formal change in the
38 lease agreement which modifies the method, frequency, or manner in

1 which the lease payments are made, but does not increase the total
2 lease payment obligation of the lessee, shall not be considered
3 modification of a lease term.

4 (29) "Medical care program" or "medicaid program" means medical
5 assistance, including nursing care, provided under RCW 74.09.500 or
6 authorized state medical care services.

7 (30) "Medical care recipient," "medicaid recipient," or "recipient"
8 means an individual determined eligible by the department for the
9 services provided under chapter 74.09 RCW.

10 (31) "Minimum data set" means the overall data component of the
11 resident assessment instrument, indicating the strengths, needs, and
12 preferences of an individual nursing facility resident.

13 (32) "Net book value" means the historical cost of an asset less
14 accumulated depreciation.

15 (33) "Net invested funds" means the net book value of tangible
16 fixed assets employed by a contractor to provide services under the
17 medical care program, including land, buildings, and equipment as
18 recognized and measured in conformity with generally accepted
19 accounting principles.

20 (34) "Nonurban county" means a county which is not located in a
21 metropolitan statistical area as determined and defined by the United
22 States office of management and budget or other appropriate agency or
23 office of the federal government.

24 (35) "Owner" means a sole proprietor, general or limited partners,
25 members of a limited liability company, and beneficial interest holders
26 of five percent or more of a corporation's outstanding stock.

27 (36) "Patient day" or "resident day" means a calendar day of care
28 provided to a nursing facility resident, regardless of payment source,
29 which will include the day of admission and exclude the day of
30 discharge; except that, when admission and discharge occur on the same
31 day, one day of care shall be deemed to exist. A "medicaid day" or
32 "recipient day" means a calendar day of care provided to a medicaid
33 recipient determined eligible by the department for services provided
34 under chapter 74.09 RCW, subject to the same conditions regarding
35 admission and discharge applicable to a patient day or resident day of
36 care.

37 (37) "Qualified therapist" means:

38 (a) A mental health professional as defined by chapter 71.05 RCW;

1 (b) An intellectual disabilities professional who is a therapist
2 approved by the department who has had specialized training or one
3 year's experience in treating or working with persons with intellectual
4 or developmental disabilities;

5 (c) A speech pathologist who is eligible for a certificate of
6 clinical competence in speech pathology or who has the equivalent
7 education and clinical experience;

8 (d) A physical therapist as defined by chapter 18.74 RCW;

9 (e) An occupational therapist who is a graduate of a program in
10 occupational therapy, or who has the equivalent of such education or
11 training; and

12 (f) A respiratory care practitioner certified under chapter 18.89
13 RCW.

14 (38) "Rate" or "rate allocation" means the medicaid per-patient-day
15 payment amount for medicaid patients calculated in accordance with the
16 allocation methodology set forth in part E of this chapter.

17 (39) "Rebased rate" or "cost-rebased rate" means a facility-
18 specific component rate assigned to a nursing facility for a particular
19 rate period established on desk-reviewed, adjusted costs reported for
20 that facility covering at least six months of a prior calendar year
21 designated as a year to be used for cost-rebasing payment rate
22 allocations under the provisions of this chapter.

23 (40) "Records" means those data supporting all financial statements
24 and cost reports including, but not limited to, all general and
25 subsidiary ledgers, books of original entry, and transaction
26 documentation, however such data are maintained.

27 (41) "Resident assessment instrument," including federally approved
28 modifications for use in this state, means a federally mandated,
29 comprehensive nursing facility resident care planning and assessment
30 tool, consisting of the minimum data set and resident assessment
31 protocols.

32 (42) "Resident assessment protocols" means those components of the
33 resident assessment instrument that use the minimum data set to trigger
34 or flag a resident's potential problems and risk areas.

35 (43) "Resource utilization groups" means a case mix classification
36 system that identifies relative resources needed to care for an
37 individual nursing facility resident.

1 (44) "Secretary" means the secretary of the department of social
2 and health services.

3 (45) "Small nonessential community providers" means nonessential
4 community providers with sixty or fewer licensed beds, regardless of
5 how many beds are set up or in use.

6 (46) "Support services" means food, food preparation, dietary,
7 housekeeping, and laundry services provided to nursing facility
8 residents.

9 (47) "Therapy care" means those services required by a nursing
10 facility resident's comprehensive assessment and plan of care, that are
11 provided by qualified therapists, or support personnel under their
12 supervision, including related costs as designated by the department.

13 (48) "Title XIX" or "medicaid" means the 1965 amendments to the
14 social security act, P.L. 89-07, as amended and the medicaid program
15 administered by the department.

16 (49) "Urban county" means a county which is located in a
17 metropolitan statistical area as determined and defined by the United
18 States office of management and budget or other appropriate agency or
19 office of the federal government.

20 (50) "Competitive bid process" means a transparent procurement
21 method in which bids from generic manufacturers are invited by openly
22 advertising the scope, specifications, and terms and conditions of
23 proposed contracts as well as the criteria by which the bids will be
24 evaluated. The objective of competitive bidding is to establish the
25 lowest price at which generic drugs may be procured by stimulating
26 competition and preventing favoritism.

27 (51) "Generic drugs" means copies of brand name drugs that are no
28 longer protected by patents. Generics are drugs that contain the same
29 active ingredients, are identical in strength, dosage form, and route
30 of administration as the brand name innovator drug, and has the same
31 indications, dosing, and labeling, and provides the same efficacy and
32 safety profile to patients as the brand name innovator drug.

33 (52) "Generic manufacturers" means those manufacturers that
34 manufacture generic drugs and distribute those generic drugs in this
35 state.

36 NEW SECTION. Sec. 3. A new section is added to chapter 74.46 RCW
37 to read as follows:

1 The department of social and health services as the state medicaid
2 agency shall require all generic drug manufacturers whose products are
3 to be provided to medicaid recipients to compete in a competitive bid
4 process created by the agency to ensure that the agency is providing
5 medicaid recipients with quality generic products at a competitively
6 bid low cost.

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