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ENGROSSED SUBSTITUTE HOUSE BILL 1737

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State of Washington

62nd Legislature

2011 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Short, Seaquist, and Schmick)

READ FIRST TIME 02/17/11.

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

17       (b) Technical deficiencies may not be the basis for finding an  
18 overpayment if the pharmacy can substantiate through documentation that  
19 the claim for services complies with all of the elements of an  
20 allowable cost, as provided in subsection (3) of this section. In  
21 determining whether or not the pharmacy has satisfied the allowable  
22 cost requirement that medical records indicate that services were  
23 consistent with the medical diagnosis, the department shall give  
24 consideration to the unique circumstances of many pharmacies as  
25 separate entities from the prescribing provider and shall consider the  
26 record requirement according to that which a reasonable pharmacy in a  
27 similar situation may be expected to maintain;

28       (c) An audited pharmacy may use the written records of a hospital,  
29 physician, or other authorized pharmacy to validate the audited  
30 pharmacy's record; and

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

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

37       (3) For the purposes of this section:

1 (a) "Technical deficiency" means a billing error or omission that  
2 does not affect any elements of an allowable cost. "Technical  
3 deficiency" 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;

6 (ii) Failure to properly document expedited prior authorization  
7 criteria; or

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

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

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

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

14 (iii) Properly coded; and

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

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

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

21 NEW SECTION. **Sec. 5.** If any part of this act is found to be in  
22 conflict with federal requirements that are a prescribed condition to  
23 the allocation of federal funds to the state, the conflicting part of  
24 this act is inoperative solely to the extent of the conflict and with  
25 respect to the agencies directly affected, and this finding does not  
26 affect the operation of the remainder of this act in its application to  
27 the agencies concerned. Rules adopted under this act must meet federal  
28 requirements that are a necessary condition to the receipt of federal  
29 funds by the state.

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