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SENATE BILL 5794

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators Kilmer, Parlette, Zarelli, Prentice, Keiser, and Shin

Read first time 02/02/09. Referred to Committee on Ways & Means.

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 2008. Beginning fiscal year 2009 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 2010 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 2010 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 prescriber may use the written records of a  
10 hospital, physician, or other authorized pharmacy to validate the  
11 audited 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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