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SENATE BILL 5880

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Kilmer, Kastama, Swecker, Roach, Keiser and Delvin

Read first time 02/05/2007. Referred to Committee on Health & Long-Term Care.

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

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

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

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

1 or his designee, to inspect and audit all records in connection with  
2 the providing of such services.

3 (2) It is the intent of the legislature that the regulatory and  
4 inspection program authorized in this section shall include:

5 (a) A systematic pharmacy audit program for determining compliance  
6 with state and federal laws relating to payment for providing services  
7 to recipients under this chapter;

8 (b) A technical assistance program to identify pharmacies that  
9 could benefit from technical assistance from the department with regard  
10 to billing for payment, and to provide that assistance; and

11 (c) A systematic method to gather data for program improvement.

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

14 (1) The secretary or his or her authorized representative shall  
15 develop and implement a program of technical assistance to pharmacies  
16 providing services under this chapter that:

17 (a) Offers education to pharmacies regarding compliance with the  
18 payment requirements for programs under this chapter; and

19 (b) Offers technical assistance to pharmacies that request such  
20 assistance or who, as identified in a prepayment or other preaudit  
21 review, would benefit from such assistance.

22 (2) The department may order a pharmacy to comply with a corrective  
23 plan if, during technical assistance or prepayment or other preaudit  
24 review, a pattern of technical deficiencies is identified. If the  
25 pharmacy fails to comply with the corrective plan, the pharmacy may be  
26 referred for audit under this chapter.

27 (3) The department shall develop a plan to incorporate into the  
28 provider payment system, by January 1, 2009, system capability to  
29 identify and report a pattern of technical deficiencies by pharmacies  
30 in making payment claims. Technical deficiencies identified by this  
31 system may be used to determine pharmacies to which technical  
32 assistance will be offered. The department must report to the  
33 appropriate committees of the legislature by January 1, 2008, and  
34 September 1, 2008, on the progress made to implement this system  
35 requirement.

36 (4) As used in this section, "technical deficiency" means the same  
37 as defined in section 3 of this act.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 74.09 RCW  
2 to read as follows:

3        (1) With respect to audits of the records of pharmacies licensed  
4 under chapter 18.64 RCW, the secretary or his or her authorized  
5 representative shall develop and implement a program under this chapter  
6 that:

7        (a) Establishes a regular audit cycle and prioritizes pharmacy  
8 audits based on criteria to be developed by the department including,  
9 but not limited to, a history of compliance with this chapter and rules  
10 adopted under this chapter; and

11        (b) Conducts audits, subject to the following:

12        (i)(A) Except as provided in (b)(i)(B) of this subsection,  
13 technical deficiencies may not be the basis for finding an overpayment  
14 if the pharmacy can substantiate through documentation that the  
15 services or goods were provided to the recipient and that the technical  
16 deficiency did not adversely affect direct patient care of the  
17 recipient, unless recoupment of the payment is specifically mandated in  
18 state or federal law or rule or failure to recoup payment will result  
19 in the loss of federal matching funds or other penalty against the  
20 state; and

21        (B) In response to an audit finding technical deficiencies,  
22 including a pattern of noncompliance with technical requirements, the  
23 department may order the pharmacy to comply with a corrective plan. If  
24 the pharmacy fails to comply with the corrective plan, action to recoup  
25 overpayments may be taken based on technical deficiencies;

26        (ii) An audited pharmacy may use the written records of a hospital,  
27 physician, or other authorized pharmacy to validate the audited  
28 pharmacy's record;

29        (iii) Findings and recommendations related to overpayments or  
30 underpayments may be based on an extrapolation from a sample of  
31 records. However, extrapolation may not be used to calculate the  
32 amount of an overpayment, and recoupment of an overpayment must be  
33 based on the actual overpayment unless the projection is part of a  
34 settlement agreed to by the pharmacy;

35        (iv) The pharmacy must be given at least forty-five days from the  
36 date on which the draft audit findings were delivered to the pharmacy  
37 to respond with additional documentation or other relevant information.  
38 Extensions of this time period shall be granted for good cause; and

1 (v) A final audit report must be delivered to the pharmacy within  
2 one hundred eighty days after delivering a draft audit report to the  
3 pharmacy or after the close of a dispute conference, whichever occurs  
4 later. If extensions of time are granted to the pharmacy under (b)(iv)  
5 of this subsection, the time period for delivery of the final audit  
6 report shall include the additional days allowed for the extension. An  
7 audit report delivered after the time period specified in this  
8 subsection must be deemed to be a draft audit report.

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

11 (3) For the purposes of this section:

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

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

17 (i) Lack of medical necessity or failure to document medical  
18 necessity in a manner that meets professionally recognized applicable  
19 standards of care;

20 (ii) Failure to provide care of a quality that meets professionally  
21 recognized standards of care;

22 (iii) Failure to obtain prior or concurrent authorization of the  
23 service if required under this chapter or rules adopted under this  
24 chapter; or

25 (iv) Fraud, a pattern of abusive billing or noncompliance, or a  
26 gross or flagrant violation.

27 NEW SECTION. **Sec. 4.** The secretary of the department of social  
28 and health services may adopt rules as necessary to implement this act.

29 NEW SECTION. **Sec. 5.** Section 3 of this act applies retroactively  
30 to audits commenced by the department of social and health services  
31 under chapter 74.09 RCW on or after April 1, 2007.

32 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
33 conflict with federal requirements that are a prescribed condition to  
34 the allocation of federal funds to the state, the conflicting part of  
35 this act is inoperative solely to the extent of the conflict and with

1 respect to the agencies directly affected, and this finding does not  
2 affect the operation of the remainder of this act in its application to  
3 the agencies concerned. Rules adopted under this act must meet federal  
4 requirements that are a necessary condition to the receipt of federal  
5 funds by the state.

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