

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1032

By: Easley of the Senate

and

Adkins of the House

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9 COMMITTEE SUBSTITUTE

10 (professions and occupations - Oklahoma Chiropractic
11 Practice Act - certain continuing education -
12 Pharmacy Audit Integrity Act - codification -
13 effective date)

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16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY 59 O.S. 2001, Section 161.3, as
18 amended by Section 1, Chapter 269, O.S.L. 2004 (59 O.S. Supp. 2006,
19 Section 161.3), is amended to read as follows:

20 Section 161.3 As used in the Oklahoma Chiropractic Practice
21 Act, these words, phrases or terms, unless the context otherwise
22 indicates, shall have the following meanings:

23 1. "Accredited chiropractic college" means a chiropractic
24 educational institution which is accredited by the Commission on

1 Accreditation of the Council on Chiropractic Education, a national,
2 independent accreditation body recognized and approved by the U.S.
3 Department of Education, or its successor;

4 2. "Animal chiropractic diagnosis and treatment" means
5 treatment that includes vertebral subluxation complex (vsc) and
6 spinal manipulation of nonhuman vertebrates. The term "animal
7 chiropractic diagnosis and treatment" shall not be construed to
8 allow the:

- 9 a. use of x-rays,
- 10 b. performing of surgery,
- 11 c. dispensing or administering of medications, or
- 12 d. performance of traditional veterinary care;

13 3. "Applicant" means any person submitting an application for
14 licensure to the Board;

15 4. "Board" means the Board of Chiropractic Examiners;

16 5. "Chiropractic physician", "chiropractor", "doctor of
17 chiropractic", "practitioner of chiropractic" and "licensee" are
18 synonymous and mean a person holding an original license to practice
19 chiropractic in this state;

20 6. "Examination" means the process used by the Board, prior to
21 the issuance of an original license, to test the qualifications and
22 knowledge of an applicant on any or all of the following: current
23 statutes, rules or any of those subjects listed in Section 161.8 of
24 this title;

1 7. "Intern" means a student at an accredited chiropractic
2 college who is participating in the Chiropractic Undergraduate
3 Preceptorship Program;

4 8. "Nonclinical" means of a business nature including, but not
5 limited to, practice management, insurance information, and computer
6 information. It shall also mean the discussion of philosophy as it
7 relates to the performance of chiropractic;

8 9. "Original license" means a license granting initial
9 authorization to practice chiropractic in this state issued by the
10 Board to an applicant found by the Board to meet the licensing
11 requirements of the Oklahoma Chiropractic Practice Act, by
12 examination pursuant to Section 161.7 of this title, or by
13 reciprocity pursuant to Section 161.9 of this title;

14 ~~9.~~ 10. "Preceptor" means a chiropractic physician who is
15 participating in the Chiropractic Undergraduate Preceptorship
16 Program;

17 ~~10.~~ 11. "Relocation of practice" means the recognition and
18 approval by the Board, prior to the issuance of an original license,
19 of the chiropractic licensing process in another state, country,
20 territory or province; and

21 ~~11.~~ 12. "Renewal license" means a license issued to a
22 chiropractic physician by the Board, on or before the first day of
23 January of each year, which authorizes such licensee to practice
24 chiropractic in this state during the succeeding calendar year.

1 SECTION 2. AMENDATORY Section 8, Chapter 269, O.S.L.
2 2004, as amended by Section 5, Chapter 149, O.S.L. 2005 (59 O.S.
3 Supp. 2006, Section 161.10a), is amended to read as follows:

4 Section 161.10a A. At least ninety (90) calendar days prior to
5 offering a continuing education course in Oklahoma, an association
6 shall submit to the Board for approval:

7 1. An application to provide continuing education in this
8 state;

9 2. The agenda for the continuing education seminar;

10 3. The professional background of the instructors; and

11 4. A summary of the courses to be taught at the continuing
12 education seminar.

13 B. No later than thirty (30) days after submission of the
14 application, the Board of Chiropractic Examiners shall either
15 approve or reject the continuing education seminar.

16 C. A continuing education program shall offer seminars
17 providing continuing education on those subjects within the scope of
18 practice of chiropractic as well as those technical, professional,
19 and practical subjects that relate to the practice of chiropractic
20 as included in Section 161.8 of Title 59 of the Oklahoma Statutes.
21 Instructors at continuing education seminars may sell products as
22 long as the sale of such products is ancillary to the purpose of the
23 seminar.

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1 D. Each year a chiropractic physician must attend sixteen (16)
2 hours of continuing education. Twelve (12) hours must be within the
3 scope of practice of chiropractic as well as those technical,
4 professional, and practical subjects that relate to the practice of
5 chiropractic as included in Section 161.8 of this title. A maximum
6 of four (4) hours may be nonclinical in nature.

7 E. Beginning January 1, 2006, a maximum of eight (8) hours of
8 the annual Oklahoma continuing education requirements may be
9 obtained by a continuing education program outside this state if the
10 out-of-state continuing education program is approved by the Board.

11 ~~E.~~ F. Chiropractic physicians who have not been in active
12 practice during the previous year shall be exempt from that calendar
13 year's continuing education requirements. However, prior to
14 returning to active practice, the chiropractor must have attended
15 the required continuing education during the previous calendar year.

16 ~~F.~~ G. All licensed chiropractic physicians must attend a
17 minimum of eight (8) hours of in-state continuing education programs
18 approved by the Board of Chiropractic Examiners.

19 ~~G.~~ H. Beginning January 1, 2005, the Board shall waive the in-
20 state attendance requirements for continuing education, if the
21 licensee was prevented from attending by illness or extenuating
22 circumstances, as determined by the Board.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 356 of Title 59, unless there is
3 created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Pharmacy Audit
5 Integrity Act".

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 356.1 of Title 59, unless there
8 is created a duplication in numbering, reads as follows:

9 A. For purposes of this act, "pharmacy benefits manager" or
10 "PBM" means a person, business, or other entity that performs
11 pharmacy benefits management. The term includes a person or entity
12 acting for a PBM in a contractual or employment relationship in the
13 performance of pharmacy benefits management for a managed care
14 company, nonprofit hospital, medical service organization, insurance
15 company, third-party payor, or a health program administered by a
16 department of this state.

17 B. The purpose of this act is to establish minimum and uniform
18 standards and criteria for the audit of pharmacy records by or on
19 behalf of certain entities.

20 C. This act shall apply to any audit of the records of a
21 pharmacy conducted by a managed care company, nonprofit hospital,
22 medical service organization, insurance company, third-party payor,
23 pharmacy benefits manager, a health program administered by a
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1 department of this state, or any entity that represents these
2 companies, groups, or departments.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 356.2 of Title 59, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The entity conducting an audit shall:

7 1. Identify and describe the audit procedures in the pharmacy
8 contract;

9 2. For an on-site audit, give the pharmacy written notice at
10 least two (2) weeks prior to conducting the initial on-site audit
11 for each audit cycle;

12 3. For an on-site audit, not interfere with the delivery of
13 pharmacist services to a patient and shall utilize every reasonable
14 effort to minimize inconvenience and disruption to pharmacy
15 operations during the audit process;

16 4. Conduct any audit involving clinical or professional
17 judgment by means of or in consultation with a licensed pharmacist;

18 5. Not consider as fraud any clerical or record-keeping error,
19 such as a typographical error, scrivener's error, or computer error
20 regarding a required document or record; however, such claims may be
21 subject to recoupment. No such claim shall be subject to criminal
22 penalties without proof of intent to commit fraud;

23 6. Permit a pharmacy to use the records of a hospital,
24 physician, or other authorized practitioner of the healing arts for

1 | drugs or medicinal supplies written or transmitted by any means of
2 | communication for purposes of validating the pharmacy record with
3 | respect to orders or refills of a legend or narcotic drug;

4 | 7. Base a finding of an overpayment or underpayment on the
5 | actual overpayment or underpayment and the finding may not be a
6 | projection based on the number of patients served having similar
7 | diagnoses or on the number of similar orders or refills for similar
8 | drugs;

9 | 8. Not include the dispensing fee amount in a finding of an
10 | overpayment unless a prescription was not actually dispensed or a
11 | physician denied authorization;

12 | 9. Audit each pharmacy under the same standards and parameters
13 | as other similarly situated pharmacies audited by the entity;

14 | 10. Not exceed two (2) years from the date the claim was
15 | submitted to or adjudicated by a managed care company, nonprofit
16 | hospital or medical service organization, insurance company, third-
17 | party payor, pharmacy benefits manager, a health program
18 | administered by a department of this state, or any entity that
19 | represents the companies, groups, or departments for the period
20 | covered by an audit;

21 | 11. Not schedule or initiate an audit during the first seven
22 | (7) calendar days of any month due to the high volume of
23 | prescriptions filled in the pharmacy during that time unless
24 | otherwise consented to by the pharmacy;

1 12. Not receive payment based on a percentage of the amount
2 recovered; and

3 13. Disclose to any plan sponsor whose claims were included in
4 the audit any money recouped in the audit. The monies shall be
5 returned to the plan sponsor and the copays shall be returned
6 directly to the patients. The results of any provider pharmacy
7 audit shall be disclosed to the State Insurance Commissioner.

8 B. The entity conducting the audit shall provide the pharmacy
9 with a written report of the audit and shall:

10 1. Deliver a preliminary audit report to the pharmacy within
11 ninety (90) days after conclusion of the audit;

12 2. Allow the pharmacy at least thirty (30) days following
13 receipt of the preliminary audit report in which to produce
14 documentation to address any discrepancy found during the audit;
15 provided, however, a pharmacy may request an extension, not to
16 exceed sixty (60) days;

17 3. Deliver a final audit report to the pharmacy, signed by both
18 the auditor and the pharmacist participating in the audit, within
19 one hundred twenty (120) days after receipt of the preliminary audit
20 report or final appeal, as provided for in Section 6 of this act,
21 whichever is later;

22 4. Recoup any disputed funds after final internal disposition
23 of the audit, including the appeals process as provided for in
24 Section 6 of this act; and

1 5. Not accrue interest during the audit period.

2 C. Each entity conducting an audit shall provide a copy of the
3 final audit report, after completion of any review process, to the
4 plan sponsor.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 356.3 of Title 59, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Each entity conducting an audit shall establish a written
9 appeals process under which a pharmacy may appeal an unfavorable
10 preliminary audit report to the entity.

11 B. Following an appeal, if the entity finds that an unfavorable
12 audit report or any portion thereof is unsubstantiated, the entity
13 shall dismiss the audit report or the unsubstantiated portion of the
14 audit report without any further action.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 356.4 of Title 59, unless there
17 is created a duplication in numbering, reads as follows:

18 Notwithstanding any other provision in this act, the entity
19 conducting the audit shall not use the accounting practice of
20 extrapolation in calculating recoupments or penalties for audits.

21 An "extrapolation audit" means an audit of a sample of prescription
22 drug benefit claims submitted by a pharmacy to the entity conducting
23 the audit that is then used to estimate audit results for a larger
24 batch or group of claims not reviewed by the auditor.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 356.5 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The audit criteria set forth in this act shall apply only to
5 audits of claims for services provided and claims submitted for
6 payment after this act becomes law.

7 B. The Pharmacy Audit Integrity Act shall not apply to any
8 investigative audit conducted by or on behalf of a state agency
9 which involves fraud, willful misrepresentation, or abuse including
10 without limitation investigative audits or any other statutory
11 provision which authorizes investigations relating to insurance
12 fraud.

13 SECTION 9. This act shall become effective November 1, 2007.

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