

1 ENGROSSED HOUSE  
2 BILL NO. 2490

By: Hilliard, Kiesel, Sherrer,  
Covey, Turner and McAffrey  
of the House

3  
4 and

Sparks of the Senate

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8 An Act relating to professions and occupations;  
9 establishing the Pharmacy Audit Integrity Act;  
10 defining term; stating purpose; specifying  
11 applicability; establishing minimum standards and  
12 criteria for the audit of certain records; providing  
13 for audit results and report; specifying content;  
14 providing for recoupment of certain funds; providing  
15 for appeals process; prohibiting certain accounting  
16 practice; limiting application of act; providing for  
17 codification; and providing an effective date.

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

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

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

24 SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 356.1 of Title 59, unless there  
is created a duplication in numbering, reads as follows:

1           A. For purposes of the Pharmacy Audit Integrity Act, "pharmacy  
2 benefits manager" or "PBM" means a person, business, or other entity  
3 that performs pharmacy benefits management. The term includes a  
4 person or entity acting for a PBM in a contractual or employment  
5 relationship in the performance of pharmacy benefits management for  
6 a managed care company, nonprofit hospital, medical service  
7 organization, insurance company, third-party payor, or a health  
8 program administered by a department of this state.

9           B. The purpose of the Pharmacy Audit Integrity Act is to  
10 establish minimum and uniform standards and criteria for the audit  
11 of pharmacy records by or on behalf of certain entities.

12           C. The Pharmacy Audit Integrity Act shall apply to any audit of  
13 the records of a pharmacy conducted by a managed care company,  
14 nonprofit hospital, medical service organization, insurance company,  
15 third-party payor, pharmacy benefits manager, a health program  
16 administered by a department of this state, or any entity that  
17 represents these companies, groups, or departments.

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

21           A. The entity conducting an audit shall:

22           1. Identify and describe the audit procedures in the pharmacy  
23 contract;

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

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

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

10          5. Not consider as fraud any clerical or record-keeping error,  
11 such as a typographical error, scrivener's error, or computer error  
12 regarding a required document or record; however, such errors may be  
13 subject to recoupment. A person shall not be subject to criminal  
14 penalties for errors provided for in this paragraph without proof of  
15 intent to commit fraud;

16          6. Permit a pharmacy to use the records of a hospital,  
17 physician, or other authorized practitioner of the healing arts for  
18 drugs or medicinal supplies written or transmitted by any means of  
19 communication for purposes of validating the pharmacy record with  
20 respect to orders or refills of a legend or narcotic drug;

21          7. Base a finding of an overpayment or underpayment on the  
22 actual overpayment or underpayment, and the finding may not be a  
23 projection based on the number of patients served having similar  
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1 diagnoses or on the number of similar orders or refills for similar  
2 drugs;

3 8. Not include the dispensing fee amount in a finding of an  
4 overpayment unless a prescription was not actually dispensed or a  
5 physician denied authorization;

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

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

15 11. Not schedule or initiate an audit during the first five (5)  
16 calendar days of any month due to the high volume of prescriptions  
17 filled in the pharmacy during that time unless otherwise consented  
18 to by the pharmacy;

19 12. Not receive payment based on a percentage of the amount  
20 recovered; and

21 13. Disclose to any plan sponsor whose claims were included in  
22 the audit any money recouped in the audit. Unless otherwise  
23 provided for by contract between the plan sponsor and the entity  
24 conducting the audit or the pharmacy benefits manager, the monies

1 shall be returned to the plan sponsor and the copays shall be  
2 returned directly to the patients.

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

5 1. Deliver a preliminary audit report to the pharmacy within  
6 one hundred twenty (120) days after conclusion of the audit;

7 2. Allow the pharmacy at least sixty (60) days following  
8 receipt of the preliminary audit report in which to produce  
9 documentation to address any discrepancy found during the audit;  
10 provided, however, a pharmacy may request an extension, not to  
11 exceed an additional sixty (60) days;

12 3. Deliver a final audit report to the pharmacy signed by the  
13 auditor within six (6) months after receipt of the preliminary audit  
14 report or final appeal, as provided for in Section 4 of this act,  
15 whichever is later;

16 4. Recoup any disputed funds after final internal disposition  
17 of the audit, including the appeals process as provided for in  
18 Section 4 of this act. Should the identified discrepancy for an  
19 individual audit exceed Fifty Thousand Dollars (\$50,000.00), future  
20 payments to the pharmacy in excess of Fifty Thousand Dollars  
21 (\$50,000.00) may be withheld pending finalization of the audit; and

22 5. Not accrue interest during the audit period.

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

4 SECTION 4. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 356.3 of Title 59, unless there  
6 is created a duplication in numbering, reads as follows:

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

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

14 C. Any final audit report with a finding of fraud or willful  
15 misrepresentation shall be referred to the district attorney having  
16 proper jurisdiction or the Attorney General for prosecution upon  
17 completion of the appeals process.

18 SECTION 5. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 356.4 of Title 59, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. For the purposes of the Pharmacy Audit Integrity Act,  
22 "extrapolation audit" means an audit of a sample of prescription  
23 drug benefit claims submitted by a pharmacy to the entity conducting  
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1 the audit that is then used to estimate audit results for a larger  
2 batch or group of claims not reviewed by the auditor.

3 B. The entity conducting the audit shall not use the accounting  
4 practice of extrapolation in calculating recoupments or penalties  
5 for audits.

6 SECTION 6. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 356.5 of Title 59, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. The audit criteria set forth in the Pharmacy Audit Integrity  
10 Act shall apply only to audits of claims for services provided and  
11 claims submitted for payment after this act becomes law.

12 B. The Pharmacy Audit Integrity Act shall not apply to any  
13 audit which involves fraud, willful misrepresentation, abuse or  
14 Medicaid payments including, without limitation, investigative  
15 audits or any other statutory provision which authorizes  
16 investigations relating to insurance fraud.

17 SECTION 7. This act shall become effective November 1, 2008.

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1 Passed the House of Representatives the 20th day of February,  
2 2008.

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5 Presiding Officer of the House of  
6 Representatives

7 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2008.

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10 Presiding Officer of the Senate

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