

THE HOUSE OF REPRESENTATIVES  
Monday, February 18, 2008

Committee Substitute for  
House Bill No. 2490

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2490 - By: HILLIARD of the House.

An Act relating to professions and occupations; establishing the Pharmacy Audit Integrity Act; defining term; stating purpose; specifying applicability; establishing minimum standards and criteria for the audit of certain records; providing for report; specifying content; providing for appeals process; prohibiting certain accounting practice; limiting application of act; providing for codification; and providing an effective date.

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

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

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

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

8 A. For purposes of the Pharmacy Audit Integrity Act, “pharmacy benefits manager”  
9 or “PBM” means a person, business, or other entity that performs pharmacy benefits  
10 management. The term includes a person or entity acting for a PBM in a contractual or

1 employment relationship in the performance of pharmacy benefits management for a  
2 managed care company, nonprofit hospital, medical service organization, insurance  
3 company, third-party payor, or a health program administered by a department of this  
4 state.

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

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

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

16 A. The entity conducting an audit shall:

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

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

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

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

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

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

12 7. Base a finding of an overpayment or underpayment on the actual overpayment  
13 or underpayment, and the finding may not be a projection based on the number of  
14 patients served having similar diagnoses or on the number of similar orders or refills for  
15 similar drugs;

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

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

20 10. Not exceed two (2) years from the date the claim was submitted to or  
21 adjudicated by a managed care company, nonprofit hospital or medical service  
22 organization, insurance company, third-party payor, pharmacy benefits manager, a

1 health program administered by a department of this state, or any entity that represents  
2 the companies, groups, or departments for the period covered by an audit;

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

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

7 13. Disclose to any plan sponsor whose claims were included in the audit any  
8 money recouped in the audit. Unless otherwise provided for by contract between the  
9 plan sponsor and the entity conducting the audit or the pharmacy benefits manager, the  
10 monies shall be returned to the plan sponsor and the co-pays shall be returned directly to  
11 the patients.

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

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

16 2. Allow the pharmacy at least thirty (30) days following receipt of the preliminary  
17 audit report in which to produce documentation to address any discrepancy found during  
18 the audit; provided, however, a pharmacy may request an extension, not to exceed one  
19 hundred twenty (120) days;

20 3. Deliver a final audit report to the pharmacy, signed by both the auditor and the  
21 pharmacist participating in the audit, within six (6) months after receipt of the

1 preliminary audit report or final appeal, as provided for in Section 4 of this act,  
2 whichever is later;

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

5 5. Not accrue interest during the audit period.

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

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

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

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

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

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

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

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

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

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

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

14 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02-14-08 - DO  
15 PASS, As Amended.