

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2490

By: Hilliard

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6 AS INTRODUCED

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

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

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

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

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

A. For purposes of the Pharmacy Audit Integrity Act, "pharmacy
benefits manager" or "PBM" means a person, business, or other entity

1 that performs pharmacy benefits management. The term includes a
2 person or entity acting for a PBM in a contractual or employment
3 relationship in the performance of pharmacy benefits management for
4 a managed care company, nonprofit hospital, medical service
5 organization, insurance company, third-party payor, or a health
6 program administered by a department of this state.

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

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

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

19 A. The entity conducting an audit shall:

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

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

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

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

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

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

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

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

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

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

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

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

19 13. Disclose to any plan sponsor whose claims were included in
20 the audit any money recouped in the audit. The monies shall be
21 returned to the plan sponsor and the co-pays shall be returned
22 directly to the patients. The results of any provider pharmacy
23 audit shall be disclosed to the State Insurance Commissioner.
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1 B. The entity conducting the audit shall provide the pharmacy
2 with a written report of the audit and shall:

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

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

10 3. Deliver a final audit report to the pharmacy, signed by both
11 the auditor and the pharmacist participating in the audit, within
12 one hundred twenty (120) days after receipt of the preliminary audit
13 report or final appeal, as provided for in Section 4 of this act,
14 whichever is later;

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

18 5. Not accrue interest during the audit period.

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

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

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

4 B. Following an appeal, if the entity finds that an unfavorable
5 audit report or any portion thereof is unsubstantiated, the entity
6 shall dismiss the audit report or the unsubstantiated portion of the
7 audit report without any further action.

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

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

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

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

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

1 B. The Pharmacy Audit Integrity Act shall not apply to any
2 investigative audit conducted by or on behalf of a state agency
3 which involves fraud, willful misrepresentation, or abuse including,
4 without limitation, investigative audits or any other statutory
5 provision which authorizes investigations relating to insurance
6 fraud.

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

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