

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 673

By: Jolley of the Senate

3 and

4 Cox of the House

5

6

7 [ audits of pharmacy records - Pharmacy Audit  
8 Integrity Act - effective date ]

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10 AUTHOR: Add the following House Coauthor: Ritze and Derby

11 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
12 entire bill and insert

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13 "An Act relating to audits of pharmacy records;  
14 amending Sections 3 and 4, Chapter 137, O.S.L. 2008  
15 (59 O.S. Supp. 2010, Sections 356.2 and 356.3),  
16 which relate to the Pharmacy Audit Integrity Act;  
17 setting limit on certain documentation and record-  
18 keeping requirements; expanding scope of requirement  
19 for certain written notice; requiring identification  
20 of prescription numbers to be audited; modifying  
21 certain time limit; providing for certain  
22 flexibility; limiting number of audits in certain  
23 circumstances; permitting pharmacies to submit  
24 amended claims in certain circumstances; limiting  
recoupment of funds by pharmacy benefit managers in  
certain circumstances; extending amount of time  
certain audits cannot be scheduled; providing for  
certain validation of claims; limiting number of  
audits certain entities may undertake; directing  
auditing entities to pay for certain copies;  
reducing amount of time certain reports must be  
delivered; deleting provision permitting certain  
withholding of payments; prohibiting the accrual of  
interest during certain appeal period; prohibiting  
certain type of compensation; limiting access to

1 certain audit reports; limiting use of certain  
2 information; expanding certain requirements for  
3 appeals; permitting certain parties to seek legal  
4 remedy; and providing an effective date.

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

6 SECTION 1. AMENDATORY Section 3, Chapter 137, O.S.L.  
7 2008 (59 O.S. Supp. 2010, Section 356.2), is amended to read as  
8 follows:

9 Section 356.2 A. The entity conducting an audit of a pharmacy  
10 shall:

11 1. Identify and describe the audit procedures in the pharmacy  
12 contract. Prescription claim documentation and record-keeping  
13 requirements shall not exceed the requirements set forth by the  
14 Oklahoma Pharmacy Act, Section 353 et seq. of Title 59 of the  
15 Oklahoma Statutes, or other applicable state or federal laws or  
16 regulations;

17 2. ~~For an on-site audit, give~~ Give the pharmacy written notice,  
18 including identification of prescription numbers to be audited, at  
19 least ~~two (2) weeks~~ thirty (30) calendar days prior to conducting  
20 the initial on-site an audit for each audit cycle and allow the  
21 pharmacy flexibility in scheduling audits in the event that multiple  
22 entities request audits during the same calendar month such that no  
23 more than two entities shall audit the same pharmacy within the same  
24 thirty-calendar-day period;

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. The pharmacy shall have the right to submit  
11 amended claims to correct clerical or record-keeping errors in lieu  
12 of recoupment, provided that the prescription was dispensed  
13 according to prescription documentation requirements set forth by  
14 the Oklahoma Pharmacy Act, Section 353 et seq. of Title 59 of the  
15 Oklahoma Statutes. To the extent that an audit results in the  
16 identification of any clerical or record-keeping errors such as  
17 typographical errors, scrivener's errors or computer errors in a  
18 required document or record, the pharmacy shall not be subject to  
19 recoupment of funds by the pharmacy benefit manager unless the  
20 pharmacy benefit manager can provide proof of intent to commit fraud  
21 or such error results in actual financial harm to the pharmacy  
22 benefit manager, a health insurance plan managed by the pharmacy  
23 benefit manager or a consumer. A person shall not be subject to  
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1 criminal penalties for errors provided for in this paragraph without  
2 proof of intent to commit fraud;

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

8 7. Base a finding of an overpayment or underpayment on a  
9 projection based on the number of patients served having similar  
10 diagnoses or on the number of similar orders or refills for similar  
11 drugs; provided, recoupment of claims shall be based on the actual  
12 overpayment or underpayment of each identified claim. A projection  
13 for overpayment or underpayment may be used to determine recoupment  
14 as part of a settlement as agreed to by the pharmacy;

15 8. Not include the dispensing fee amount in a finding of an  
16 overpayment unless a prescription was not actually dispensed or a  
17 physician denied authorization or as otherwise agreed to by  
18 contract;

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

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

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

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

8 12. Disclose to any plan sponsor whose claims were included in  
9 the audit any money recouped in the audit; and

10 13. Permit the pharmacy to use any legal prescription to  
11 validate claims in connection with prescriptions, refills or changes  
12 in prescription.

13 B. The entity conducting the audit shall not audit more than  
14 forty (40) prescriptions per audit.

15 C. If copies of records are requested by the entity conducting  
16 the audit, the entity shall pay twenty-five cents (\$0.25) per page  
17 to cover the costs incurred by the pharmacy.

18 D. The entity conducting the audit shall provide the pharmacy  
19 with a written report of the audit and shall:

20 1. Deliver a preliminary audit report to the pharmacy within  
21 ~~one hundred twenty (120) days~~ sixty (60) calendar days after  
22 conclusion of the audit;

23 2. Allow the pharmacy at least sixty (60) calendar days  
24 following receipt of the preliminary audit report in which to

1 produce documentation to address any discrepancy found during the  
2 audit; provided, however, a pharmacy may request an extension, not  
3 to exceed an additional sixty (60) calendar days;

4 3. Deliver a final audit report to the pharmacy signed by the  
5 auditor within ~~six (6) months~~ ninety (90) calendar days after  
6 receipt of the preliminary audit report or final appeal, as provided  
7 for in Section 4 356.3 of this ~~act~~ title, whichever is later;

8 4. Recoup any disputed funds after final internal disposition  
9 of the audit, including the appeals process as provided for in  
10 Section 4 356.3 of this ~~act~~. ~~Should the identified discrepancy for~~  
11 ~~an individual audit exceed Twenty-five Thousand Dollars~~  
12 ~~(\$25,000.00), future payments to the pharmacy in excess of Twenty-~~  
13 ~~five Thousand Dollars (\$25,000.00) may be withheld pending~~  
14 ~~finalization of the audit~~ title; and

15 5. Not accrue interest during the audit and appeal period.

16 ~~C.~~ E. Each entity conducting an audit shall provide a copy of  
17 the final audit results, and a final audit report upon request,  
18 after completion of any review process to the plan sponsor.

19 F. Each entity conducting an audit shall not be compensated or  
20 receive payment for services based on a percentage of the amount  
21 recovered or projected to be recovered by the audit.

22 G. Unless superseded by state or federal law, auditors shall  
23 only have access to previous audit reports on a particular pharmacy  
24 conducted by the auditing entity for the same pharmacy benefit

1 manager, health plan or insurer. An auditing vendor contracting  
2 with multiple pharmacy benefit managers or health insurance plans  
3 shall not use audit reports or other information gained from an  
4 audit on a particular pharmacy to conduct another audit for a  
5 different pharmacy benefit manager or health insurance plan.

6 SECTION 2. AMENDATORY Section 4, Chapter 137, O.S.L.  
7 2008 (59 O.S. Supp. 2010, Section 356.3), is amended to read as  
8 follows:

9 Section 356.3 A. Each entity conducting an audit shall  
10 establish a written appeals process under which a pharmacy may  
11 appeal an unfavorable preliminary audit report and/or final audit  
12 report to the entity.

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

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

21 D. If either party is not satisfied with the outcome of the  
22 appeal, the dissatisfied party may seek legal remedy, including, but  
23 not limited to, mediation, arbitration or other legal action,  
24 including, without limitation, class action.

