

OKLAHOMA STATE SENATE  
CONFERENCE  
COMMITTEE REPORT

May 17, 2011

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 673

By: Jolley of the Senate and Cox et al of the House

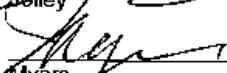
Title: Pharmacy records; modifying provisions related to the Pharmacy Audit Integrity Act. Effective date.

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

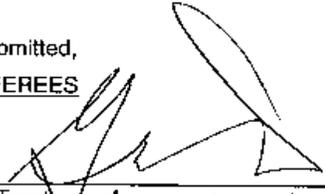
1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,  
SENATE CONFEREES

  
\_\_\_\_\_  
Jolley

  
\_\_\_\_\_  
Myers

  
\_\_\_\_\_  
David

  
\_\_\_\_\_  
Treat

  
\_\_\_\_\_  
Burrage

\_\_\_\_\_  
Eason McIntyre

HOUSE CONFEREES:

Conference Committee on Health and Human Services

**ADOPTED & PASSED**  
Senate Action \_\_\_\_\_ Date MAY 19 2011 House Action \_\_\_\_\_ Date \_\_\_\_\_

**HOUSE CONFEREES**

Billy

~~W.A.~~

Cox

Douglas G. Cox M.P.

Derby

David Derby

Enns

John Enns

Fourkiller

Will Fourkiller

Kern

Sally Kern

McAffrey

John McAffrey

Nelson

\_\_\_\_\_

Peterson

Pam Peterson

Pruett

Richard Pruet

Roberts (Sean)

\_\_\_\_\_

Sanders

Mike Sanders

Scott

\_\_\_\_\_

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL NO. 673

6 By: Jolley of the Senate

7 and

8 Cox, Ritze and Derby of the  
9 House

10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to audits of pharmacy records;  
12 amending Sections 3 and 4, Chapter 137, O.S.L. 2008  
13 (59 O.S. Supp. 2010, Sections 356.2 and 356.3), which  
14 relate to the Pharmacy Audit Integrity Act; setting  
15 limit on certain documentation and record-keeping  
16 requirements; expanding scope of requirement for  
17 certain written notice; requiring identification of  
18 prescription numbers to be audited; permitting  
19 certain rescheduling; permitting submission of  
20 certain records; limiting number of audits in certain  
21 circumstances; permitting pharmacies to submit  
22 amended claims in certain circumstances; limiting  
23 recoupment of funds by pharmacy benefits managers in  
24 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;  
modifying provisions permitting certain withholding  
of payments; prohibiting the accrual of interest  
during certain appeal period; requiring certain  
refund; prohibiting certain charge or assessment  
based on amounts recouped; providing for exceptions;  
limiting access to certain audit reports; limiting  
use of certain information; expanding certain

1 requirements for appeals; limiting scope of act; and  
2 providing an effective date.

3  
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

10 1. Identify and describe the audit procedures in the pharmacy  
11 contract. Unless otherwise agreed to in contract by both parties,  
12 prescription claim documentation and record keeping requirements  
13 shall not exceed the requirements set forth by the Oklahoma Pharmacy  
14 Act or other applicable state or federal laws or regulations;

15 2. For an on-site audit, give the pharmacy written notice,  
16 including identification of prescription numbers to be audited, at  
17 least two (2) weeks prior to conducting the ~~initial~~ on-site audit  
18 for each audit cycle. The pharmacy shall have the opportunity to  
19 reschedule the audit no more than seven (7) days from the date  
20 designated on the original audit notification;

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

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

3 5. Not consider as fraud any clerical or record-keeping error,  
4 such as a typographical error, scrivener's error, or computer error  
5 regarding a required document or record; however, such errors may be  
6 subject to recoupment. The pharmacy shall have the right to submit  
7 amended claims to correct clerical or record keeping errors in lieu  
8 of recoupment, provided that the prescription was dispensed  
9 according to prescription documentation requirements set forth by  
10 the Oklahoma Pharmacy Act. To the extent that an audit results in  
11 the identification of any clerical or record keeping errors such as  
12 typographical errors, scrivener's errors or computer errors in a  
13 required document or record, the pharmacy shall not be subject to  
14 recoupment of funds by the pharmacy benefits manager unless the  
15 pharmacy benefits manager can provide proof of intent to commit  
16 fraud or such error results in actual financial harm to the pharmacy  
17 benefits manager, a health insurance plan managed by the pharmacy  
18 benefits manager or a consumer. A person shall not be subject to  
19 criminal penalties for errors provided for in this paragraph without  
20 proof of intent to commit fraud;

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

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

10 8. Not include the dispensing fee amount in a finding of an  
11 overpayment unless a prescription was not actually dispensed or a  
12 physician denied authorization or as otherwise agreed to by  
13 contract;

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

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

23 11. Not schedule or initiate an audit during the first ~~five (5)~~  
24 seven (7) calendar days of any month due to the high volume of

1 prescriptions filled in the pharmacy during that time unless  
2 otherwise consented to by the pharmacy; and

3 12. Disclose to any plan sponsor whose claims were included in  
4 the audit any money recouped in the audit.

5 B. A pharmacy may provide the pharmacy's computerized patterned  
6 medical records or the records of a hospital, physician, or other  
7 authorized practitioner of the healing arts for drugs or medicinal  
8 supplies written or transmitted by any means of communication for  
9 purposes of supporting the pharmacy record with respect to orders or  
10 refills of a legend or narcotic drug.

11 C. The entity conducting the audit shall not audit more than  
12 seventy-five (75) prescriptions per initial audit.

13 D. If paper copies of records are requested by the entity  
14 conducting the audit, the entity shall pay twenty five cents (\$0.25)  
15 per page to cover the costs incurred by the pharmacy.

16 E. The entity conducting the audit shall provide the pharmacy  
17 with a written report of the audit and shall:

18 1. Deliver a preliminary audit report to the pharmacy within  
19 ~~one hundred twenty (120) days~~ ninety (90) calendar days after  
20 conclusion of the audit;

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

3 3. Deliver a final audit report to the pharmacy signed by the  
4 auditor within ~~six (6) months~~ one hundred twenty (120) calendar days  
5 after receipt of the preliminary audit report or final appeal, as  
6 provided for in Section 4 356.3 of this ~~act~~ title, whichever is  
7 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 of this act. ~~Should the identified discrepancy for an~~  
11 ~~individual audit exceed Twenty-five Thousand Dollars (\$25,000.00),~~  
12 ~~future payments to the pharmacy in excess of Twenty-five Thousand~~  
13 ~~Dollars (\$25,000.00) may be withheld pending finalization of the~~  
14 ~~audit~~ Unless otherwise agreed by the parties, future payments to the  
15 pharmacy may be withheld pending finalization of the audit should  
16 the identified discrepancy exceed Twenty-Five Thousand Dollars  
17 (\$25,000.00); and

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

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

22 G. The full amount of any recoupment on an on-site audit shall  
23 be refunded to the plan sponsor. Except as provided for in  
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1 paragraph 1 of this subsection, a charge or assessment for an audit  
2 shall not be based, directly or indirectly, on amounts recouped.

3 1. This subsection does not prevent the entity conducting the  
4 audit from charging or assessing the responsible party, directly or  
5 indirectly, based on amounts recouped if both of the following  
6 conditions are met:

7 a. the plan sponsor and the entity conducting the audit  
8 have a contract that explicitly states the percentage  
9 charge or assessment to the plan sponsor, and

10 b. a commission to an agent or employee of the entity  
11 conducting the audit is not based, directly or  
12 indirectly, on amounts recouped.

13 H. Unless superseded by state or federal law, auditors shall  
14 only have access to previous audit reports on a particular pharmacy  
15 conducted by the auditing entity for the same pharmacy benefits  
16 manager, health plan or insurer. An auditing vendor contracting  
17 with multiple pharmacy benefits managers or health insurance plans  
18 shall not use audit reports or other information gained from an  
19 audit on a particular pharmacy to conduct another audit for a  
20 different pharmacy benefits manager or health insurance plan.

21 SECTION 2. AMENDATORY Section 4, Chapter 137, O.S.L.  
22 2008 (59 O.S. Supp. 2010, Section 356.3), is amended to read as  
23 follows:  
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1 Section 356.3. A. Each entity conducting an audit shall  
2 establish a written appeals process under which a pharmacy may  
3 appeal an unfavorable preliminary audit report and/or final audit  
4 report to the entity.

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

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

13 D. This act does not apply to any audit, review or  
14 investigation that is initiated based on or that involves suspected  
15 or alleged fraud, willful misrepresentation or abuse.

16 SECTION 3. This act shall become effective November 1, 2011.

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