

1 ENGROSSED SENATE  
2 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 ]  
9

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

11 SECTION 1. AMENDATORY Section 3, Chapter 137, O.S.L.  
12 2008 (59 O.S. Supp. 2010, Section 356.2), is amended to read as  
13 follows:

14 Section 356.2. A. The entity conducting an audit of a pharmacy  
15 shall:

16 1. Identify and describe the audit procedures in the pharmacy  
17 contract. Prescription claim documentation and record keeping  
18 requirements shall not exceed the requirements set forth by the  
19 Oklahoma Pharmacy Practice Act or other applicable state or federal  
20 laws or regulations;

21 2. ~~For an on-site audit, give~~ Give the pharmacy written notice,  
22 including identification of prescription numbers to be audited, at  
23 least ~~two (2) weeks~~ thirty (30) calendar days prior to conducting  
24 the initial on-site an audit for each audit cycle and allow the

1 pharmacy flexibility in scheduling audits in the event that multiple  
2 entities request audits during the same calendar month such that no  
3 more than two entities shall audit the same pharmacy within the same  
4 thirty (30) calendar day period;

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

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

11 5. Not consider as fraud any clerical or record-keeping error,  
12 such as a typographical error, scrivener's error, or computer error  
13 regarding a required document or record; however, such errors may be  
14 subject to recoupment. The pharmacy shall have the right to submit  
15 amended claims to correct clerical or record keeping errors in lieu  
16 of recoupment, provided that the prescription was dispensed  
17 according to prescription documentation requirements set forth by  
18 the Oklahoma Pharmacy Act. To the extent that an audit results in  
19 the identification of any clerical or record keeping errors such as  
20 typographical errors, scrivener's errors or computer errors in a  
21 required document or record, the pharmacy shall not be subject to  
22 recoupment of funds by the pharmacy benefit manager unless the  
23 pharmacy benefit manager can provide proof of intent to commit fraud  
24 or such error results in actual financial harm to the pharmacy

1 benefit manager, a health insurance plan managed by the pharmacy  
2 benefit manager or a consumer. A person shall not be subject to  
3 criminal penalties for errors provided for in this paragraph without  
4 proof of intent to commit fraud;

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

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

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

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

23 10. Not exceed two (2) years from the date the claim was  
24 submitted to or adjudicated by a managed care company, nonprofit

1 hospital or medical service organization, insurance company, third-  
2 party payor, pharmacy benefits manager, a health program  
3 administered by a department of this state, or any entity that  
4 represents the companies, groups, or departments for the period  
5 covered by an audit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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1        G. Unless superseded by state or federal law, auditors shall  
2 only have access to previous audit reports on a particular pharmacy  
3 conducted by the auditing entity for the same pharmacy benefit  
4 manager, health plan or insurer. An auditing vendor contracting  
5 with multiple pharmacy benefit managers or health insurance plans  
6 shall not use audit reports or other information gained from an  
7 audit on a particular pharmacy to conduct another audit for a  
8 different pharmacy benefit manager or health insurance plan.

9        SECTION 2.        AMENDATORY        Section 4, Chapter 137, O.S.L.  
10        2008 (59 O.S. Supp. 2010, Section 356.3), is amended to read as  
11        follows:

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

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

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

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

SECTION 3. This act shall become effective November 1, 2011.  
Passed the Senate the 7th day of March, 2011.

\_\_\_\_\_  
Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2011.

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Presiding Officer of the House  
of Representatives