

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

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

5 Section 356.2 A. The entity conducting an audit of a pharmacy
6 shall:

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

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

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

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

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

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

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

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

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

19 10. Not exceed two (2) years from the date the claim was
20 submitted to or adjudicated by a managed care company, nonprofit
21 hospital or medical service organization, insurance company, third-
22 party payor, pharmacy benefits manager, a health program
23 administered by a department of this state, or any entity that

1 represents the companies, groups, or departments for the period
2 covered by an audit;

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

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

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

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

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

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

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

22 2. Allow the pharmacy at least sixty (60) calendar days
23 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 ~~E.~~ 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

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

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

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

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

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

22 D. If either party is not satisfied with the outcome of the
23 appeal, the dissatisfied party may seek legal remedy, including, but

1 not limited to, mediation, arbitration or other legal action,
2 including, without limitation, class action.

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

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5 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 03-31-2011 -
6 DO PASS, As Amended and Coauthored.
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