

1 **SENATE FLOOR VERSION**

2 February 28, 2011

3 As Amended

4 SENATE BILL NO. 673

By: Jolley of the Senate

and

Cox of the House

6
7
8 [audits of pharmacy records - Pharmacy Audit
9 Integrity Act - effective date]

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

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

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

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

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

1 ~~the initial on-site~~ an audit for each audit cycle and allow the
2 pharmacy flexibility in scheduling audits in the event that multiple
3 entities request audits during the same calendar month such that no
4 more than two entities shall audit the same pharmacy within the same
5 thirty (30) calendar day period;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 D. The entity conducting the audit shall provide the pharmacy
23 with a written report of the audit and shall:
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1 1. Deliver a preliminary audit report to the pharmacy within
2 ~~one hundred twenty (120) days~~ sixty (60) calendar days after
3 conclusion of the audit;

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

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

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

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

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

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

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

12 SECTION 2. AMENDATORY Section 4, Chapter 137, O.S.L.
13 2008 (59 O.S. Supp. 2010, Section 356.3), is amended to read as
14 follows:

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

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

23 C. Any final audit report with a finding of fraud or willful
24 misrepresentation shall be referred to the district attorney having

1 proper jurisdiction or the Attorney General for prosecution upon
2 completion of the appeals process.

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-11 - DO
9 PASS, As Amended and Coauthored.

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