

1 ENGROSSED SENATE AMENDMENTS
TO
2 ENGROSSED HOUSE
BILL NO. 2677

By: Marti, Caldwell (Trey),
Fugate, West (Tammy),
Dollens, Davis and Sneed of
the House

and

McCortney of the Senate

9 An Act relating to professions and occupations;
amending 59 O.S. 2011, Section 356.2, which relates
10 to the Pharmacy Audit Integrity Act; modifying and
expanding duties; prohibiting certain audits;
11 providing for discrepancies; requiring acceptance of
certain evidence; requiring provision of certain
12 documents within specified time; providing audit
requirements; modifying number of prescriptions to be
13 audited; requiring invoices; modifying audit report
time periods; eliminating certain withholdings;
14 amending 59 O.S. 2011, Section 356.3, which relates
to appeals process; clarifying when certain findings
15 are to be referred to the district attorney;
clarifying scope of application; amending Section 3,
16 Chapter 263, O.S.L. 2014 (59 O.S. Supp. 2020, Section
359), which relates to information to be provided by
17 pharmacy benefits manager; removing exceptions;
amending Section 4, Chapter 263, O.S.L. 2014, as
18 amended by Section 8, Chapter 285, O.S.L. 2016 (59
O.S. Supp. 2020, Section 360), which relates to
19 contractual duties to providers; modifying
reimbursement procedure; prohibiting placement of
20 drugs on certain list, with exceptions; modifying
accreditation or licensing requirement; allowing
21 certain entities to decline to provide services;
requiring provision of certain information; and
22 declaring an emergency.

1 AUTHOR: Add the following Senate Coauthors: Bergstrom and Garvin

2 AMENDMENT NO. 1. Page 8, line 22, delete after the number "5" and
3 before the word "not", the word "May"

4 AMENDMENT NO. 2. Page 11, line 1 1/2, insert a new Section 3 to
5 read

6 "SECTION 3. AMENDATORY Section 2, Chapter 263, O.S.L.
7 2014 (59 O.S. Supp. 2020, Section 358), is amended to read as
8 follows:

9 Section 358. A. In order to provide pharmacy benefits
10 management or any of the services included under the definition of
11 pharmacy benefits management in this state, a pharmacy benefits
12 manager or any entity acting as one in a contractual or employment
13 relationship for a covered entity shall first obtain a license from
14 the Oklahoma Insurance Department, and the Department may charge a
15 fee for such licensure.

16 B. The Department shall establish, by regulation, licensure
17 procedures, required disclosures for pharmacy benefits managers
18 (PBMs) and other rules as may be necessary for carrying out and
19 enforcing the provisions of this act. The licensure procedures
20 shall, at a minimum, include the completion of an application form
21 that shall include the name and address of an agent for service of
22 process, the payment of a requisite fee, and evidence of the
23 procurement of a surety bond.

24 C. The Department may subpoena witnesses and information. Its
compliance officers may take and copy records for investigative use
and prosecutions. Nothing in this subsection shall limit the Office
of the Attorney General from using its investigative demand
authority to investigate and prosecute violations of the law.

D. The Department may suspend, revoke or refuse to issue or
renew a license for noncompliance with any of the provisions hereby
established or with the rules promulgated by the Department; for
conduct likely to mislead, deceive or defraud the public or the
Department; for unfair or deceptive business practices or for
nonpayment of a renewal fee or fine. The Department may also levy
administrative fines for each count of which a licensee PBM has been
convicted in a Department hearing."

and renumber subsequent sections

and amend the title to conform

1 Passed the Senate the 22nd day of April, 2021.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2021.

7
8 _____
9 Presiding Officer of the House
10 of Representatives

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24 pharmacy benefits manager; removing exceptions;
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amended by Section 8, Chapter 285, O.S.L. 2016 (59
O.S. Supp. 2020, Section 360), which relates to
contractual duties to providers; modifying
reimbursement procedure; prohibiting placement of
drugs on certain list, with exceptions; modifying
accreditation or licensing requirement; allowing
certain entities to decline to provide services;
requiring provision of certain information; and
declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 356.2, is amended to read as follows:

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

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

2. ~~For an on-site audit, give~~ Give the pharmacy written notice by certified letter to the pharmacy and the pharmacy's contracting agent, including identification of specific prescription numbers and fill dates to be audited, at least two (2) weeks prior to conducting the ~~on-site~~ audit, including, but not limited to, an on-site audit, a desk audit, or a wholesale purchase audit, request for documentation related to the dispensing of a prescription drug or any reimbursed activity by a pharmacy provider; provided, however, that wholesale purchase audits shall require a minimum of thirty (30) days written notice. The pharmacy shall have the opportunity to reschedule the audit no more than seven (7) days from the date designated on the original audit notification;

3. ~~For an on-site audit, not~~ Not interfere with the delivery of pharmacist services to a patient and shall utilize every reasonable

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, including, but not~~
8 limited to, a miscalculated day supply, incorrectly billed

9 prescription written date or prescription origin code, and such
10 errors ~~may~~ shall not be subject to recoupment. The pharmacy shall

11 have the right to submit amended claims electronically to correct
12 clerical or record-keeping errors in lieu of recoupment, ~~provided~~

13 ~~that the prescription was dispensed according to prescription~~
14 ~~documentation requirements set forth by the Oklahoma Pharmacy Act.~~

15 To the extent that an audit results in the identification of any
16 clerical or record-keeping errors such as typographical errors,

17 scrivener's errors or computer errors in a required document or

18 record, the pharmacy shall not be subject to recoupment of funds by

19 the pharmacy benefits manager unless the pharmacy benefits manager

20 can provide proof of intent to commit fraud ~~or such error results in~~

21 ~~actual financial harm to the pharmacy benefits manager, a health~~

22 ~~insurance plan managed by the pharmacy benefits manager or a~~

23 ~~consumer.~~ A person shall not be subject to criminal penalties for
24

1 errors provided for in this paragraph without proof of intent to
2 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 or the actual invoice
16 cost of the prescription dispensed in a finding of an ~~overpayment~~
17 audit recoupment unless a prescription was not actually dispensed or
18 a physician denied authorization ~~or as otherwise agreed to by~~
19 ~~contract~~ of a dispensing order;

20 ~~9.~~ 8. Audit each pharmacy under ~~the same~~ identical standards,
21 regularity and parameters as other similarly situated pharmacies
22 ~~audited by the entity~~ and all pharmacies owned or managed by the
23 pharmacy benefits manager conducting or having conducted the audit;
24

1 ~~10.~~ 9. Not exceed ~~two (2) years~~ one (1) year from the date the
2 claim was submitted to or adjudicated by a managed care company,
3 nonprofit hospital or medical service organization, insurance
4 company, third-party payor, pharmacy benefits manager, a health
5 program administered by a department of this state, or any entity
6 that represents the companies, groups, or departments for the period
7 covered by an audit;

8 ~~11.~~ 10. Not schedule or initiate an audit during the first
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.~~ 11. Disclose to any plan sponsor whose claims were included
13 in the audit any money recouped in the audit; and

14 12. Not require pharmacists to break open packaging labeled
15 "for single-patient-use only". Packaging labeled "for single-
16 patient-use only" shall be deemed to be the smallest package size
17 available.

18 B. 1. Any entity that conducts wholesale purchase review
19 during an audit of a pharmacist or pharmacy shall not require the
20 pharmacist or pharmacy to provide a full dispensing report.
21 Wholesaler invoice reviews shall be limited to verification of
22 purchase inventory specific to the pharmacy claims paid by the
23 health benefits plan or pharmacy benefits manager conducting the
24 audit.

1 2. Any entity conducting an audit shall not identify or label a
2 prescription claim as an audit discrepancy when:

3 a. the National Drug Code for the dispensed drug is in a
4 quantity that is a subunit or multiple of the drug
5 purchased by the pharmacist or pharmacy as supported
6 by a wholesale invoice,

7 b. the pharmacist or pharmacy dispensed the correct
8 quantity of the drug according to the prescription,
9 and

10 c. the drug dispensed by the pharmacist or pharmacy
11 shares all but the last two digits of the National
12 Drug Code of the drug reflected on the supplier
13 invoice.

14 3. An entity conducting an audit shall accept as evidence,
15 subject to validation, to support the validity of a pharmacy claim
16 related to a dispensed drug:

17 a. redacted copies of supplier invoices in the
18 pharmacist's or pharmacy's possession, or

19 b. invoices and any supporting documents from any
20 supplier as authorized by federal or state law to
21 transfer ownership of the drug acquired by the
22 pharmacist or pharmacy.

23 4. An entity conducting an audit shall provide, no later than
24 five (5) business days after the date of a request by the pharmacist

1 or pharmacy, all supporting documents the pharmacist's or pharmacy's
2 purchase suppliers provided to the health benefits plan issuer or
3 pharmacy benefits manager.

4 C. A pharmacy ~~may~~ shall be allowed to provide the pharmacy's
5 computerized patterned medical records or 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 supporting the pharmacy record with
9 respect to orders or refills of a legend or narcotic drug.

10 ~~C.~~ D. The entity conducting the audit shall not audit more than
11 ~~seventy-five (75)~~ fifty prescriptions, with specific date of
12 service, per initial-audit calendar year. The annual limit to the
13 number of prescription claims audited shall be inclusive of all
14 audits, including any prescription-related documentation requests
15 from the health insurer, pharmacy benefits manager or any third-
16 party company conducting audits on behalf of any health insurer or
17 pharmacy benefits manager during a calendar year.

18 ~~D.~~ E. If paper copies of records are requested by the entity
19 conducting the audit, the entity shall pay twenty-five cents (\$0.25)
20 per page to cover the costs incurred by the pharmacy. The entity
21 conducting the audit shall provide the pharmacy with accurate
22 instructions, including any required form for obtaining
23 reimbursement for the copied records.

1 ~~E. F.~~ The entity conducting the audit shall ~~provide the~~
2 ~~pharmacy with a written report of the audit and shall:~~

3 1. Deliver a preliminary audit findings report to the pharmacy
4 and the pharmacy's contracting agent within ~~ninety (90)~~ forty-five
5 (45) calendar days ~~after conclusion~~ of conducting the audit;

6 2. Allow the pharmacy at least ~~sixty (60)~~ ninety (90) calendar
7 days following receipt of the preliminary audit findings report in
8 which to produce documentation to address any discrepancy found
9 during the audit; provided, however, a pharmacy may request an
10 extension, not to exceed an additional ~~sixty (60)~~ forty-five (45)
11 calendar days;

12 3. Deliver a final audit findings report to the pharmacy and
13 the pharmacy's contracting agent signed by the auditor within ~~one~~
14 ~~hundred twenty (120)~~ ten (10) calendar days after receipt of ~~the~~
15 ~~preliminary audit report or final appeal~~ additional documentation
16 provided by the pharmacy, as provided for in Section 356.3 of this
17 title, ~~whichever is later~~;

18 4. ~~Recoup~~ Allow the pharmacy to reverse and resubmit claims
19 electronically within thirty (30) days of receipt of the final audit
20 report in lieu of the auditing entity recouping discrepant claim
21 amounts from the pharmacy;

22 5. May not recoup any disputed funds until after final ~~internal~~
23 disposition of the audit findings, including the appeals process as
24 provided for in Section 356.3 of this title. ~~Unless otherwise~~

~~agreed by the parties, future payments to the pharmacy may be withheld pending finalization of the audit should the identified discrepancy exceed Twenty-five Thousand Dollars (\$25,000.00); and~~

~~5.~~ 6. Not accrue interest during the audit and appeal period.

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

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

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

- a. the plan sponsor and the entity conducting the audit have a contract that explicitly states the percentage charge or assessment to the plan sponsor, and
- b. a commission to an agent or employee of the entity conducting the audit is not based, directly or indirectly, on amounts recouped.

~~H.~~ I. Unless superseded by state or federal law, auditors shall only have access to previous audit reports on a particular pharmacy conducted by the auditing entity for the same pharmacy benefits

1 manager, health plan or insurer. An auditing vendor contracting
2 with multiple pharmacy benefits 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 benefits manager or health insurance plan.

6 SECTION 2. AMENDATORY 59 O.S. 2011, Section 356.3, is
7 amended to read as follows:

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

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

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

21 D. This act does not apply to any audit, review or
22 investigation that is initiated based on or that involves ~~suspected~~
23 ~~or alleged~~ fraud, willful ~~misrepresentation~~ misrepresentation or
24 abuse.

SECTION 3. AMENDATORY Section 3, Chapter 263, O.S.L.

2014 (59 O.S. Supp. 2020, Section 359), is amended to read as follows:

Section 359. ~~Unless otherwise provided by contract, a~~ A pharmacy benefits manager shall provide, upon request by the covered entity, information regarding the difference in the amount paid to providers for prescription services rendered to covered individuals and the amount billed by the pharmacy benefits manager to the covered entity or plan sponsor to pay for prescription services rendered to covered individuals.

SECTION 4. AMENDATORY Section 4, Chapter 263, O.S.L.

2014, as amended by Section 8, Chapter 285, O.S.L. 2016 (59 O.S. Supp. 2020, Section 360), is amended to read as follows:

Section 360. A. The pharmacy benefits manager shall, with respect to contracts between a pharmacy benefits manager and a provider, including a pharmacy service administrative organization:

1. Include in such contracts the specific sources utilized to determine the maximum allowable cost (MAC) pricing of the pharmacy, update MAC pricing at least every seven (7) calendar days, and establish a process for providers to readily access the MAC list specific to that provider;

2. In order to place a drug on the MAC list, ensure that the drug is listed as "A" or "B" rated in the most recent version of the FDA's Approved Drug Products with Therapeutic Equivalence

1 Evaluations, also known as the Orange Book, ~~or has an "NR" or "NA"~~
2 ~~rating or a similar rating by a nationally recognized reference~~, and
3 the drug is generally available for purchase by pharmacies in the
4 state from national or regional wholesalers and is not obsolete;

5 3. Ensure dispensing fees are not included in the calculation
6 of MAC price reimbursement to pharmacy providers;

7 4. Provide a reasonable administration appeals procedure to
8 allow a provider ~~or~~, a provider's representative and a pharmacy
9 service administrative organization to contest reimbursement amounts
10 within ~~ten (10)~~ fourteen (14) business days of the final adjusted
11 payment date. The pharmacy benefits manager shall not prevent the
12 pharmacy or the pharmacy service administrative organization from
13 filing reimbursement appeals in an electronic batch format. The
14 pharmacy benefits manager must respond to a provider ~~or~~, a
15 provider's representative and a pharmacy service administrative
16 organization who has have contested a reimbursement amount through
17 this procedure within ten (10) business days. The pharmacy benefits
18 manager must respond in an electronic batch format to reimbursement
19 appeals filed in an electronic batch format. The pharmacy benefits
20 manager shall not require a pharmacy or pharmacy services
21 administrative organization to log into a system to upload
22 individual claim appeals or to download individual appeal responses.
23 If a price update is warranted, the pharmacy benefits manager shall
24 make the change in the reimbursement amount, permit the ~~challenging~~

1 dispensing pharmacy to reverse and rebill the claim in question, and
2 make the reimbursement amount change retroactive and effective for
3 ~~each similarly~~ all ~~contracted Oklahoma provider providers;~~ and

4 5. If ~~the~~ a below-cost reimbursement appeal is denied, the PBM
5 shall provide the reason for the denial, including the National Drug
6 Code number from the specific national or regional wholesalers where
7 the drug is ~~generally~~ available for purchase by ~~pharmacies in the~~
8 ~~state at or~~ the dispensing pharmacy at a price below the PBM's
9 reimbursement price. If the pharmacy benefits manager cannot
10 provide a specific national or regional wholesaler where the drug
11 can be purchased by the dispensing pharmacy at a price below the
12 pharmacy benefits manager's reimbursement price, the pharmacy
13 benefits manager shall immediately adjust the reimbursement amount,
14 permit the dispensing pharmacy to reverse and rebill the claim in
15 question, and make the reimbursement amount adjustment retroactive
16 and effective for all contracted providers.

17 B. The pharmacy benefits manager ~~may~~ shall not place a drug on
18 a MAC list, unless there are at least two therapeutically
19 equivalent, multiple-source drugs, ~~or at least one generic drug~~
20 ~~available from only one manufacturer,~~ generally available for
21 purchase by ~~network~~ dispensing retail pharmacies from national or
22 regional wholesalers.

23 C. The pharmacy benefits manager shall not require
24 accreditation or licensing of providers, or any entity licensed or

1 regulated by the State Board of Pharmacy, other than by the State
2 Board of Pharmacy ~~or other state~~ or federal government entity as a
3 condition for participation as a network provider.

4 D. A pharmacy or pharmacist may decline to provide the
5 pharmacist clinical or dispensing services to a patient or pharmacy
6 benefits manager if the pharmacy or pharmacist is to be paid less
7 than the pharmacy's cost for providing the pharmacist clinical or
8 dispensing services.

9 E. The pharmacy benefits manager shall provide a dedicated
10 telephone number, email address and names of the personnel with
11 decision-making authority regarding MAC appeals and pricing.

12 SECTION 5. It being immediately necessary for the preservation
13 of the public peace, health or safety, an emergency is hereby
14 declared to exist, by reason whereof this act shall take effect and
15 be in full force from and after its passage and approval.

16 Passed the House of Representatives the 10th day of February,
17 2021.

18
19 _____
20 Presiding Officer of the House
of Representatives

21 Passed the Senate the ____ day of _____, 2021.

22
23 _____
24 Presiding Officer of the Senate

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