An Act

ENROLLED SENATE
BILL NO. 673

By: Jolley of the Senate

and

Cox, Ritze, Derby and
Walker of the House

An Act relating to audits of pharmacy records; amending Sections 3 and 4, Chapter 137, O.S.L. 2008 (59 O.S. Supp. 2010, Sections 356.2 and 356.3), which relate to the Pharmacy Audit Integrity Act; setting limit on certain documentation and record-keeping requirements; expanding scope of requirement for certain written notice; requiring identification of prescription numbers to be audited; permitting certain rescheduling; permitting submission of certain records; limiting number of audits in certain circumstances; permitting pharmacies to submit amended claims in certain circumstances; limiting recoupment of funds by pharmacy benefits managers in 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 requirements for appeals; limiting scope of act; and providing an effective date.

SUBJECT: Pharmacy Audit Integrity Act

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

SECTION 1. AMENDATORY Section 3, Chapter 137, O.S.L. 2008 (59 O.S. Supp. 2010, 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 describe the audit procedures in the pharmacy contract. Unless otherwise agreed to in contract by both parties, 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 the pharmacy written notice, including identification of prescription numbers to be audited, at least two (2) weeks prior to conducting the ~~initial~~ on-site audit ~~for each audit cycle~~. 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 interfere with the delivery of pharmacist services to a patient and shall utilize every reasonable effort to minimize inconvenience and disruption to pharmacy operations during the audit process;

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

5. Not consider as fraud any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error regarding a required document or record; however, such errors may be subject to recoupment. The pharmacy shall have the right to submit amended claims to correct clerical or record-keeping errors in lieu of recoupment, provided that the prescription was dispensed according to prescription documentation requirements set forth by the Oklahoma Pharmacy Act. To the extent that an audit results in the identification of any clerical or record-keeping errors such as typographical errors, scrivener's errors or computer errors in a

required document or record, the pharmacy shall not be subject to recoupment of funds by the pharmacy benefits manager unless the pharmacy benefits manager can provide proof of intent to commit fraud or such error results in actual financial harm to the pharmacy benefits manager, a health insurance plan managed by the pharmacy benefits manager or a consumer. A person shall not be subject to criminal penalties for errors provided for in this paragraph without proof of intent to commit fraud;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Deliver a final audit report to the pharmacy signed by the auditor within ~~six (6) months~~ one hundred twenty (120) calendar days after receipt of the preliminary audit report or final appeal, as provided for in Section ~~4~~ 356.3 of this ~~act~~ title, whichever is later;

4. Recoup any disputed funds after final internal disposition of the audit, including the appeals process as provided for in Section ~~4~~ 356.3 of this ~~act~~ title. ~~Should the identified~~

~~discrepancy for an individual audit exceed Twenty-five Thousand Dollars ($25,000.00), future payments to the pharmacy in excess of Twenty-five Thousand Dollars ($25,000.00) may be withheld pending finalization of the audit~~ 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. Not accrue interest during the audit and appeal period.

~~C.~~ F. 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. 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. 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 manager, health plan or insurer. An auditing vendor contracting with multiple pharmacy benefits managers or health insurance plans shall not use audit reports or other information gained from an audit on a particular pharmacy to conduct another audit for a different pharmacy benefits manager or health insurance plan.

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

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

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

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

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

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

Passed the Senate the 19th day of May, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of May, 2011.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 20th

day of May, 20 11,

at 3:06 o'clock P M.

By: Jessica R. Byers

Approved by the Governor of the State of Oklahoma the 26th day of

May, 20 11, at 2:06 o'clock P M.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

26th day of May, 20 11,

at 6:01 o'clock P. M.

By: Michelle R Day