

Bill Number: OK51RHB 2490

Date: 05-07-2008

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ENROLLED HOUSE

BILL NO. 2490 By: Hilliard, Kiesel,
Sherrer, Covey, Turner and McAffrey of the House
and
Sparks of the Senate

An Act relating to professions and
occupations;
establishing the Pharmacy Audit
Integrity Act;
defining terms; stating purpose;
specifying
applicability; establishing minimum
standards and
criteria for the audit of certain
records; providing
for audit results and report; specifying
content;
providing for recoupment of certain
funds; providing
for appeals process; prohibiting certain
accounting
practice; limiting application of act;
providing for

1 codification; and providing an effective
2 date.

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

5 SECTION 1. NEW LAW A new section of law
6 to be codified in the Oklahoma Statutes as Section
7 356 of Title 59, unless there is created a
8 duplication in numbering, reads as follows:

9 This act shall be known and may be cited as the
10 Pharmacy Audit Integrity Act.

11 SECTION 2. NEW LAW A new section of law
12 to be codified in the Oklahoma Statutes as Section
13 356.1 of Title 59, unless there is created a
14 duplication in numbering, reads as follows:

15 A. For purposes of the Pharmacy Audit
16 Integrity Act, pharmacy benefits manager or PBM
17 means a person, business, or other entity that
18 performs pharmacy benefits management. The term
19 includes a person or entity acting for a PBM in a
20 contractual or employment relationship in the
21 performance of pharmacy benefits management for a
22 managed care company, nonprofit hospital, medical
23 service organization, insurance company, third-party
24 payor, or a health program administered by a
25 department of this state.

26 B. The purpose of the Pharmacy Audit Integrity
27 Act is to establish minimum and uniform standards and

1 criteria for the audit of pharmacy records by or on
2 behalf of certain entities.

3 C. The Pharmacy Audit Integrity Act shall
4 apply to any audit of the records of a pharmacy
5 conducted by a managed care company, nonprofit
6 hospital, medical service organization, insurance
7 company, third-party payor, pharmacy benefits
8 manager, a health program administered by a
9 department of this state, or any entity that
10 represents these companies, groups, or departments.

11 SECTION 3. NEW LAW A new section of law
12 to be codified in the Oklahoma Statutes as Section
13 356.2 of Title 59, unless there is created a
14 duplication in numbering, reads as follows:

15 A. The entity conducting an audit shall:

16 1. Identify and describe the audit procedures
17 in the pharmacy contract;

18 2. For an on-site audit, give the pharmacy
19 written notice at least two (2) weeks prior to
20 conducting the initial on-site audit for each audit
21 cycle;

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

27 4. Conduct any audit involving clinical or

1 professional judgment by means of or in consultation
2 with a licensed pharmacist;

3 5. Not consider as fraud any clerical or
4 record-keeping error, such as a typographical error,
5 scriveners error, or computer error regarding a
6 required document or record; however, such errors may
7 be subject to recoupment. A person shall not be
8 subject to criminal penalties for errors provided for
9 in this paragraph without proof of intent to commit
10 fraud;

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

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

27 8. Not include the dispensing fee amount in a

1 finding of an overpayment unless a prescription was
2 not actually dispensed or a physician denied
3 authorization or as otherwise agreed to by contract;

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

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

15 11. Not schedule or initiate an audit during
16 the first five (5) calendar days of any month due to
17 the high volume of prescriptions filled in the
18 pharmacy during that time unless otherwise consented
19 to by the pharmacy; and

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

23 B. The entity conducting the audit shall
24 provide the pharmacy with a written report of the
25 audit and shall:

26 1. Deliver a preliminary audit report to the
27 pharmacy within one hundred twenty (120) days after

1 conclusion of the audit;

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

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

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

22 5. Not accrue interest during the audit
23 period.

24 C. Each entity conducting an audit shall
25 provide a copy of the final audit results, and a
26 final audit report upon request, after completion of
27 any review process to the plan sponsor.

1 SECTION 4. NEW LAW A new section of law
2 to be codified in the Oklahoma Statutes as Section
3 356.3 of Title 59, unless there is created a
4 duplication in numbering, reads as follows:

5 A. Each entity conducting an audit shall
6 establish a written appeals process under which a
7 pharmacy may appeal an unfavorable preliminary audit
8 report to the entity.

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

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

19 SECTION 5. NEW LAW A new section of law
20 to be codified in the Oklahoma Statutes as Section
21 356.4 of Title 59, unless there is created a
22 duplication in numbering, reads as follows:

23 A. For the purposes of the Pharmacy Audit
24 Integrity Act, extrapolation audit means an audit
25 of a sample of prescription drug benefit claims
26 submitted by a pharmacy to the entity conducting the
27 audit that is then used to estimate audit results for

1 a larger batch or group of claims not reviewed by the
2 auditor.

3 B. The entity conducting the audit shall not
4 use the accounting practice of extrapolation in
5 calculating recoupments or penalties for audits.

6 SECTION 6. NEW LAW A new section of law
7 to be codified in the Oklahoma Statutes as Section
8 356.5 of Title 59, unless there is created a
9 duplication in numbering, reads as follows:

10 A. The audit criteria set forth in the
11 Pharmacy Audit Integrity Act shall apply only to
12 audits of claims for services provided and claims
13 submitted for payment after this act becomes law.

14 B. The Pharmacy Audit Integrity Act shall not
15 apply to any audit, including but not limited to
16 audits conducted by or on behalf of a state agency,
17 which involves fraud, willful misrepresentation,
18 abuse or Medicaid payments including, without
19 limitation, investigative audits or any other
20 statutory provision which authorizes investigations
21 relating to insurance fraud.

22 SECTION 7. This act shall become effective
23 November 1, 2008.

24 Passed the House of Representatives the 5th day of
25 May, 2008.

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27 Presiding Officer of the House

1 of Representatives

2 Passed the Senate the 22nd day of April, 2008.

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4 Presiding Officer of the Senate

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