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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

1 of payments; prohibiting the accrual of interest  
2 during certain appeal period; requiring certain  
3 refund; prohibiting certain charge or assessment  
4 based on amounts recouped; providing for exceptions;  
5 limiting access to certain audit reports; limiting  
6 use of certain information; expanding certain  
7 requirements for appeals; limiting scope of act; and  
8 providing an effective date.

9 SUBJECT: Pharmacy Audit Integrity Act

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

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

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

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

22 2. For an on-site audit, give the pharmacy written notice,  
23 including identification of prescription numbers to be audited,  
24 at least two (2) weeks prior to conducting the [~~initial~~] on-site  
25 audit [~~for each audit cycle~~]. The pharmacy shall have the  
26 opportunity to reschedule the audit no more than seven (7) days  
27 from the date designated on the original audit notification;

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

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

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

27           6. Permit a pharmacy to use the records of a hospital,

1 physician, or other authorized practitioner of the healing arts  
2 for drugs or medicinal supplies written or transmitted by any  
3 means of communication for purposes of validating the pharmacy  
4 record with respect to orders or refills of a legend or narcotic  
5 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  
9 similar drugs; provided, recoupment of claims shall be based on  
10 the actual overpayment or underpayment of each identified claim.  
11 A projection for overpayment or underpayment may be used to  
12 determine recoupment as part of a settlement as agreed to by the  
13 pharmacy;

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

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

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

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

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

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

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

15           D. If paper copies of records are requested by the entity  
16           conducting the audit, the entity shall pay twenty-five cents  
17           (\$0.25) per page to cover the costs incurred by the pharmacy.

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

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

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

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

6           4. Recoup any disputed funds after final internal  
7 disposition of the audit, including the appeals process as  
8 provided for in Section [4] 356.3 of this [~~act~~] title.  
9 [~~Should the identified discrepancy for an individual audit exceed~~  
10 ~~Twenty five Thousand Dollars (\$25,000.00), future payments to the~~  
11 ~~pharmacy in excess of Twenty five Thousand Dollars (\$25,000.00)~~  
12 ~~may be withheld pending finalization of the audit]~~ Unless  
13 otherwise agreed by the parties, future payments to the pharmacy  
14 may be withheld pending finalization of the audit should the  
15 identified discrepancy exceed Twenty-five Thousand Dollars  
16 (\$25,000.00); and

17           5. Not accrue interest during the audit and appeal  
18 period.

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

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

27 recouped.

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

5 a. the plan sponsor and the entity conducting the  
6 audit have a contract that explicitly states the percentage charge  
7 or assessment to the plan sponsor, and

8 b. a commission to an agent or employee of the entity  
9 conducting the audit is not based, directly or indirectly, on  
10 amounts recouped.

11 H. Unless superseded by state or federal law, auditors  
12 shall only have access to previous audit reports on a particular  
13 pharmacy conducted by the auditing entity for the same pharmacy  
14 benefits manager, health plan or insurer. An auditing vendor  
15 contracting with multiple pharmacy benefits managers or health  
16 insurance plans shall not use audit reports or other information  
17 gained from an audit on a particular pharmacy to conduct another  
18 audit for a different pharmacy benefits manager or health  
19 insurance plan.

20 SECTION 2. AMENDATORY Section 4, Chapter 137, O.S.L.  
21 2008 (59 O.S. Supp. 2010, Section 356.3), is amended to read as  
22 follows:

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

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B. Following an appeal, if the entity finds that an

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1 unfavorable audit report or any portion thereof is  
2 unsubstantiated, the entity shall dismiss the audit report or the  
3 unsubstantiated portion of the audit report without any further  
4 action.

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

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

12 SECTION 3. This act shall become effective November 1,  
13 2011.

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

15 Presiding Officer of the Senate

16 Passed the House of Representatives the 20th day of May,  
17 2011.

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19 Presiding Officer of the House

20 of Representatives

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