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STATE OF OKLAHOMA

1                   1st Session of the 53rd Legislature (2011)  
2                   SENATE BILL 673           By:           Jolley  
3                                   AS INTRODUCED  
4                   An Act relating to audits of pharmacy records;  
5                   amending Sections 3 and 4, Chapter 137, O.S.L. 2008  
6                   (59 O.S. Supp. 2010, Sections 356.2 and 356.3), which  
7                   relate to the Pharmacy Audit Integrity Act; setting  
8                   limit on certain documentation and record-keeping  
9                   requirements; expand scope of requirement for certain  
10                  written notice; requiring identification of  
11                  prescription numbers to be audited; modifying certain  
12                  time limit; providing for certain flexibility;  
13                  limiting number of audits in certain circumstances;  
14                  permitting pharmacies to submit amended claims in  
15                  certain circumstances; limiting recoupment of funds  
16                  by pharmacy benefit managers in certain  
17                  circumstances; extending amount of time certain  
18                  audits cannot be scheduled; providing for certain  
19                  validation of claims; limiting number of audits  
20                  certain entities may undertake; directing auditing  
21                  entities to pay for certain copies; reducing amount  
22                  of time certain reports must be delivered; deleting  
23                  provision permitting certain withholding of payments;  
24                  prohibiting the accrual of interest during certain

1 appeal period; prohibiting certain type of  
2 compensation; limiting access to certain audit  
3 reports; limiting use of certain information;  
4 expanding certain requirements for appeals;  
5 permitting certain parties to seek legal remedy; and  
6 providing an effective date.

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

8 SECTION 1. AMENDATORY Section 3, Chapter 137, O.S.L.  
9 2008 (59 O.S. Supp. 2010, Section 356.2), is amended to read as  
10 follows:

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

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

18 2. [~~For an on-site audit, give~~] Give the pharmacy written  
19 notice, including identification of prescription numbers to be  
20 audited, at least [~~two (2) weeks~~] thirty (30) calendar days  
21 prior to conducting [~~the initial on-site~~] an audit for each  
22 audit cycle and allow the pharmacy flexibility in scheduling  
23 audits in the event that multiple entities request audits during  
24 the same calendar month such that no more than two entities shall  
25 audit the same pharmacy within the same thirty (30) calendar day  
26 period;

27 3. For an on-site audit, not interfere with the delivery of

1 pharmacist services to a patient and shall utilize every  
2 reasonable effort to minimize inconvenience and disruption to  
3 pharmacy operations during the audit process;

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

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

26 6. Permit a pharmacy to use the records of a hospital,  
27 physician, or other authorized practitioner of the healing arts

1 for drugs or medicinal supplies written or transmitted by any  
2 means of communication for purposes of validating the pharmacy  
3 record with respect to orders or refills of a legend or narcotic  
4 drug;

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

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

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

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

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11. Not schedule or initiate an audit during the first

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1 [~~five (5)~~] seven (7) calendar days of any month due to the high  
2 volume of prescriptions filled in the pharmacy during that time  
3 unless otherwise consented to by the pharmacy; [~~and~~]

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

6 13. Permit the pharmacy to use any legal prescription to  
7 validate claims in connection with prescriptions, refills or  
8 changes in prescription.

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

11 C. If copies of records are requested by the entity  
12 conducting the audit, the entity shall pay twenty five cents  
13 (\$0.25) per page to cover the costs incurred by the pharmacy.

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

16 1. Deliver a preliminary audit report to the pharmacy  
17 within [~~one hundred twenty (120) days~~] sixty (60) calendar days  
18 after conclusion of the audit;

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

24 3. Deliver a final audit report to the pharmacy signed by  
25 the auditor within [~~six (6) months~~] ninety (90) calendar days  
26 after receipt of the preliminary audit report or final appeal, as

27 provided for in Section 4 of this act, whichever is later;

1 4. Recoup any disputed funds after final internal  
2 disposition of the audit, including the appeals process as  
3 provided for in Section 4 of this act[~~. Should the identified~~  
4 ~~discrepancy for an individual audit exceed Twenty five Thousand~~  
5 ~~Dollars (\$25,000.00), future payments to the pharmacy in excess of~~  
6 ~~Twenty five Thousand Dollars (\$25,000.00) may be withheld pending~~  
7 ~~finalization of the audit~~]; and

8 5. Not accrue interest during the audit and appeal  
9 period.

10 [~~C.~~] E. Each entity conducting an audit shall provide a  
11 copy of the final audit results, and a final audit report upon  
12 request, after completion of any review process to the plan  
13 sponsor.

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

17 G. Unless superseded by state or federal law, auditors  
18 shall only have access to previous audit reports on a particular  
19 pharmacy conducted by the auditing entity for the same pharmacy  
20 benefit manager, health plan or insurer. An auditing vendor  
21 contracting with multiple pharmacy benefit managers or health  
22 insurance plans shall not use audit reports or other information  
23 gained from an audit on a particular pharmacy to conduct another  
24 audit for a different pharmacy benefit manager or health insurance  
25 plan.

26 SECTION 2. AMENDATORY Section 4, Chapter 137, O.S.L.  
27 2008 (59 O.S. Supp. 2010, Section 356.3), is amended to read as

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1 follows:

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

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

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

15 D. If either party is not satisfied with the outcome of  
16 the appeal, the dissatisfied party may seek legal remedy,  
17 including, but not limited to, mediation, arbitration or other  
18 legal action, including, without limitation, class action.

19 SECTION 3. This act shall become effective November 1,  
20 2011.

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