

1 HB360
2 124198-2
3 By Representative Johnson (R)
4 RFD: Health
5 First Read: 29-MAR-11

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8 SYNOPSIS: Existing law does not specially provide
9 minimum and uniform standards and criteria for the
10 audit of pharmacy records.

11 This bill would establish minimum and
12 uniform standards and criteria for the audit of
13 pharmacy records by or on behalf of certain
14 entities.

15 This bill would prescribe the procedures for
16 conducting an audit.

17 This bill would provide for an appeal
18 process.

19 This bill would provide that an entity
20 conducting an audit may not use the accounting
21 practice of extrapolation in calculating
22 recoupments or penalties for audits.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to audits of pharmacy records; to establish
2 minimum and uniform standards and criteria for the audit of
3 pharmacy records by or on behalf of certain entities; to
4 prescribe the procedures for conducting an audit; to provide
5 for an appeal process; and to provide that an entity
6 conducting an audit may not use the accounting practice of
7 extrapolation in calculating recoupments or penalties for
8 audits.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known and may be cited
11 as "The Pharmacy Audit Integrity Act."

12 Section 2. The following words shall have the
13 following meanings as used in this act:

14 (1) HEALTH BENEFIT PLAN. Any individual or group
15 plan, employee welfare benefit plan, policy, or contract for
16 health care services issued, delivered, issued for delivery,
17 or renewed in this state by a health care insurer, health
18 maintenance organization, accident and sickness insurer,
19 fraternal benefit society, nonprofit hospital service
20 corporation, nonprofit medical service corporation, health
21 care service plan, or any other person, firm, corporation,
22 joint venture, or other similar business entity that pays for
23 insureds or beneficiaries in this state. The term includes,
24 but is not limited to, entities created pursuant to Article 6,
25 Chapter 4, Title 10, Code of Alabama 1975. A health benefit
26 plan located or domiciled outside of the State of Alabama is
27 deemed to be subject to this act if it receives, processes,

1 adjudicates, pays, or denies claims for health care services
2 submitted by or on behalf of patients, insureds, or
3 beneficiaries who reside in Alabama. Provided, however, the
4 term shall not include accident-only, specified disease,
5 hospital indemnity, Medicare supplement, long-term care,
6 disability income, or other limited benefit health insurance
7 policies.

8 (2) PHARMACY. A place licensed by the Alabama State
9 Board of Pharmacy in which prescriptions, drugs, medicines,
10 medical devices, chemicals, and poisons are sold, offered for
11 sale, compounded, or dispensed and shall include all places
12 whose title may imply the sale, offering for sale,
13 compounding, or dispensing of prescriptions, drugs, medicines,
14 chemicals, or poisons.

15 (3) PHARMACY BENEFIT MANAGEMENT PLAN. An arrangement
16 for the delivery of pharmacist's services in which a pharmacy
17 benefit manager undertakes to administer the payment or
18 reimbursement of any of the costs of pharmacist's services for
19 an enrollee on a prepaid or insured basis that contains one or
20 more incentive arrangements intended to influence the cost or
21 level of pharmacist's services between the plan sponsor and
22 one or more pharmacies with respect to the delivery of
23 pharmacist's services and requires or creates benefit payment
24 differential incentives for enrollees to use under contract
25 with the pharmacy benefit manager.

26 (4) PHARMACY BENEFIT MANAGER. A business that
27 administers the prescription drug or device portion of

1 pharmacy benefit management plans or health insurance plans on
2 behalf of plan sponsors, insurance companies, unions, and
3 health maintenance organizations. The term includes a person
4 or entity acting for a pharmacy benefit manager in a
5 contractual or employment relationship in the performance of
6 pharmacy benefits management for a managed care company,
7 nonprofit hospital or medical service organization, insurance
8 company, or third-party payor.

9 (5) PHARMACIST SERVICES. Offering for sale,
10 compounding, or dispensing of prescriptions, drugs, medical
11 devices, medicines, chemicals, or poisons pursuant to a
12 prescription.

13 Section 3. The purpose of this act is to establish
14 minimum and uniform standards and criteria for the audit of
15 pharmacy records by or on behalf of certain entities.

16 Section 4. This act shall apply to any audit of the
17 records of a pharmacy conducted by a managed care company,
18 nonprofit hospital or medical service organization, health
19 benefit plan, third-party payor, pharmacy benefit manager, a
20 health program administered by a department of the state, or
21 any entity that represents those companies, groups, or
22 department.

23 Section 5. (a) The entity conducting an audit shall
24 follow these procedures:

25 (1) The pharmacy contract shall identify and
26 describe in detail the audit procedures.

1 (2) The entity conducting the on-site or desk audit
2 shall give the pharmacy written notice at least two weeks
3 before conducting the desk audit or the initial on-site audit
4 for each audit cycle. The notice should include a documented
5 checklist of all items being audited. This document shall
6 serve as record for both the pharmacy and the entity
7 conducting the audit. On the day of the on-site audit, the
8 auditor shall initial each item that was successfully audited.
9 The pharmacy shall produce any items not initialed by the
10 auditor within 30 days of the on-site audit. The auditor shall
11 provide the pharmacy with a receipt for records or copies of
12 records that are taken from an on-site audit.

13 (3) The entity conducting the on-site audit may not
14 interfere with the delivery of pharmacist services to a
15 patient and shall utilize every effort to minimize
16 inconvenience and disruption to pharmacy operations during the
17 audit process.

18 (4) An audit that involves clinical or professional
19 judgment shall be conducted by or in consultation with a
20 pharmacist.

21 (5) A clerical or record-keeping error, such as a
22 typographical error, scrivener's error, or computer error,
23 regarding a required document or record shall not necessarily
24 constitute fraud; however, those claims may be subject to
25 recoupment. No such claim shall be subject to criminal
26 penalties without proof of intent to commit fraud.

1 (6) An entity conducting an audit shall not require
2 any documentation that is not required by state and federal
3 law or Alabama Medicaid.

4 (7) Where not superseded by state or federal law,
5 audit information may not be shared. Auditors shall only have
6 access to previous audit reports on a particular pharmacy
7 conducted by that same entity.

8 (8) Any audit findings shall be disclosed to the
9 health benefit plan.

10 (9) A pharmacy may use the records of a hospital,
11 physician, or other authorized practitioner of the healing
12 arts for drugs or medicinal supplies written or transmitted by
13 any means of communication for purposes of validating the
14 pharmacy record with respect to orders or refills of a legend
15 or narcotic drug.

16 (10) All costs associated with the audit shall be
17 the responsibility of the auditing entity with the exception
18 of Alabama Medicaid.

19 (11) A finding of an overpayment or an underpayment
20 may be a projection based on the number of patients served
21 having a similar diagnosis or on the number of similar orders
22 or refills for similar drugs, except that recoupment shall be
23 based on the actual overpayment or underpayment of actual
24 claims.

25 (12) A finding of an overpayment may not include the
26 cost of the drugs that were dispensed in accordance with the
27 prescriber's orders. A finding of an overpayment may not

1 include the dispensing fee amount unless a prescription was
2 not dispensed.

3 (13) Each pharmacy shall be audited under the same
4 standards and parameters as other similarly situated
5 pharmacies audited by the entity.

6 (14) Where not superseded by state or federal law,
7 the period covered by an audit may not exceed two years from
8 the date the claim was submitted to or adjudicated by a
9 managed care company, nonprofit hospital or medical service
10 organization, health benefit plan, third-party payor, pharmacy
11 benefit manager, a health program administered by a department
12 of the state, or any entity that represents those companies,
13 groups, or department, and in any event the audit period may
14 not exceed the time a pharmacy is allowed to resubmit a claim
15 pursuant to a contract.

16 (15) An audit may not be initiated or scheduled
17 during the first five calendar days of any month due to the
18 high volume of prescriptions filled in the pharmacy during
19 that time unless otherwise consented to by the pharmacy.

20 (b) The entity shall provide the pharmacy with a
21 written report of the audit and comply with the following
22 requirements:

23 (1) The preliminary audit report shall be delivered
24 to the pharmacy within 120 days after the conclusion of the
25 audit, with a reasonable extension to be granted upon request.

26 (2) A pharmacy shall be allowed at least 30 days
27 following receipt of the preliminary audit report in which to

1 produce documentation to address any discrepancy found during
2 the audit, with a reasonable extension to be granted upon
3 request.

4 (3) A final audit report shall be delivered to the
5 pharmacy within 180 days after receipt of the preliminary
6 audit report or final appeal, as provided for in Section 6,
7 whichever is later.

8 (4) The audit report shall be signed by the auditor.

9 (5) Recoupments of any disputed funds, or repayment
10 of funds to the entity by the pharmacy if permitted pursuant
11 to contractual agreement, shall occur after final internal
12 disposition of the audit, including the appeals process as set
13 forth in Section 6. If the identified discrepancy for an
14 individual audit exceeds twenty-five thousand dollars
15 (\$25,000), future payments in excess of that amount to the
16 pharmacy may be withheld pending finalization of the audit.

17 (6) Interest shall not accrue during the audit
18 period.

19 (7) Each entity conducting an audit shall provide a
20 copy of the final audit report, after completion of any review
21 process, to the plan sponsor.

22 Section 6. (a) Each entity conducting an audit shall
23 establish a written appeals process under which a pharmacy may
24 appeal an unfavorable preliminary audit report to the entity.

25 (b) If, following the appeal, the entity finds that
26 an unfavorable audit report or any portion thereof is

1 unsubstantiated, the entity shall dismiss the audit report or
2 that portion without the necessity of any further action.

3 (c) If, following the appeal, any of the issues
4 raised in the appeal are not resolved to the satisfaction of
5 either party, that party may ask for mediation of those
6 unresolved issues. A certified mediator shall be chosen by
7 agreement of the parties from the mediators list maintained by
8 the Alabama Supreme Court.

9 Section 7. Notwithstanding any other provision in
10 this act, the entity conducting the audit may not use the
11 accounting practice of extrapolation in calculating
12 recoupments or penalties for audits. An extrapolation audit
13 means an audit of a sample of prescription drug benefit claims
14 submitted by a pharmacy to the entity conducting the audit
15 that is then used to estimate audit results for a larger batch
16 or group of claims not reviewed by the auditor.

17 Section 8. This act does not apply to any audit,
18 review, or investigation that involves alleged fraud, willful
19 misrepresentation, or abuse.

20 Section 9. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.