

1 HB394  
2 140035-2  
3 By Representatives Beech and Johnson (R)  
4 RFD: Health  
5 First Read: 23-FEB-12



1 care service plan, or any other person, firm, corporation,  
2 joint venture, or other similar business entity that pays for  
3 insureds or beneficiaries in this state. The term includes,  
4 but is not limited to, entities created pursuant to Article 6,  
5 Chapter 4, Title 10, Code of Alabama 1975. A health benefit  
6 plan located or domiciled outside of the State of Alabama is  
7 deemed to be subject to this act if it receives, processes,  
8 adjudicates, pays, or denies claims for health care services  
9 submitted by or on behalf of patients, insureds, or  
10 beneficiaries who reside in Alabama.

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

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

1 incentives for enrollees to use under contract with the  
2 pharmacy benefit manager.

3 (4) PHARMACY BENEFIT MANAGER. A business that  
4 administers the prescription drug or device portion of  
5 pharmacy benefit management plans or health insurance plans on  
6 behalf of plan sponsors, insurance companies, unions, and  
7 health maintenance organizations. The term includes a person  
8 or entity acting for a pharmacy benefit manager in a  
9 contractual or employment relationship in the performance of  
10 pharmacy benefits management for a managed care company,  
11 nonprofit hospital or medical service organization, insurance  
12 company, or third-party payor.

13 (5) PHARMACIST SERVICES. Offering for sale,  
14 compounding, or dispensing of prescriptions, drugs, medicines,  
15 chemicals, or poisons pursuant to a prescription. Pharmacist  
16 services also includes the sale or provision of, counseling  
17 of, or fitting of medical devices, including prosthetics and  
18 durable medical equipment.

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

22 Section 4. This act shall apply to any audit of the  
23 records of a pharmacy conducted by a managed care company,  
24 nonprofit hospital or medical service organization, health  
25 benefit plan, third-party payor, pharmacy benefit manager, a  
26 health program administered by a department of the state, or

1 any entity that represents those companies, groups, or  
2 department.

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

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

7 (2) The entity conducting the on-site audit shall  
8 give the pharmacy written notice at least two weeks before  
9 conducting the initial on-site audit for each audit cycle. If  
10 the pharmacy benefit manager does not include their auditing  
11 guidelines within their provider manual, then the audit notice  
12 must include a documented checklist of all items being audited  
13 and the manual, including the name, date, and edition or  
14 volume, applicable to the audit and auditing guidelines. For  
15 on-site audits a pharmacy benefit manager shall also provide a  
16 list of material that is copied or removed during the course  
17 of an audit to the pharmacy. The pharmacy benefit manager may  
18 document this material on either a checklist or on an audit  
19 acknowledgement form. The pharmacy shall produce any items  
20 during the course of the audit or within 30 days of the  
21 on-site audit.

22 (3) The entity conducting the on-site audit may not  
23 interfere with the delivery of pharmacist services to a  
24 patient and shall utilize every effort to minimize  
25 inconvenience and disruption to pharmacy operations during the  
26 audit process.

1           (4) An audit that involves clinical or professional  
2 judgment shall be conducted by or in consultation with a  
3 licensed pharmacist.

4           (5) The audit shall not consider as fraud any  
5 clerical or record-keeping error, such as a typographical  
6 error, scrivener's error, or computer error regarding a  
7 required document or record; however, such errors may be  
8 subject to recoupment. The pharmacy shall have the right to  
9 submit amended claims through an online submission to correct  
10 clerical or record-keeping errors in lieu of recoupment of a  
11 claim where no actual financial harm to the patient or plan  
12 has occurred, provided that the prescription was dispensed  
13 according to prescription documentation requirements set forth  
14 by the Alabama Pharmacy Act and within the plan limits. The  
15 pharmacy shall not be subject to recoupment of funds by the  
16 pharmacy benefits manager unless the pharmacy benefits manager  
17 can provide proof of intent to commit fraud or such error  
18 results in foreseeable financial or physical harm to the  
19 pharmacy benefits manager, a health insurance plan managed by  
20 the pharmacy benefits manager, or a consumer. A person shall  
21 not be subject to criminal penalties for errors provided for  
22 in this subsection without proof of intent to commit fraud,  
23 waste, or abuse.

24           (6) An entity conducting an audit shall not require  
25 any documentation that is not required by state and federal  
26 law or Alabama Medicaid. The information shall be considered  
27 to be valid if documented on the prescription, computerized

1 treatment notes, pharmacy system, or other acceptable medical  
2 records.

3 (7) Unless superseded by state or federal law,  
4 auditors shall only have access to previous audit reports on a  
5 particular pharmacy conducted by the auditing entity for the  
6 same pharmacy benefits manager, health plan, or insurer. An  
7 auditing vendor contracting with multiple pharmacy benefits  
8 managers or health insurance plans shall not use audit reports  
9 or other information gained from an audit on a particular  
10 pharmacy to conduct another audit for a different pharmacy  
11 benefits manager or health insurance plan.

12 (8) Audit results shall be disclosed to the health  
13 benefit plan in a manner pursuant to contract terms.

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

20 (10) Reasonable costs associated with the audit  
21 shall be the responsibility of the auditing entity with the  
22 exception of Alabama Medicaid if the claims sample exceeds 100  
23 unique prescription hard copies.

24 (11) A finding of an overpayment or an underpayment  
25 may be a projection based on the number of patients served  
26 having a similar diagnosis or on the number of similar orders  
27 or refills for similar drugs, except that recoupment shall be

1 based on the actual overpayment or underpayment of actual  
2 claims.

3 (12) A finding of an overpayment may not include the  
4 cost of the drugs that were dispensed in accordance with the  
5 prescriber's orders, provided the prescription was dispensed  
6 according to prescription documentation requirements set forth  
7 by the Alabama Pharmacy Act and within the plan limits. A  
8 finding of an overpayment may not include the dispensing fee  
9 amount unless:

10 a. A prescription was not actually dispensed.

11 b. The prescriber denied authorization.

12 c. The prescription dispensed was a medication error  
13 by the pharmacy.

14 d. The identified overpayment is solely based on an  
15 extra dispensing fee.

16 (13) Each pharmacy shall be audited under the same  
17 standards and parameters as other similarly situated  
18 pharmacies audited by the entity and must be audited under  
19 rules applicable to the contractor and time period of the  
20 prescription.

21 (14) Where not superseded by state or federal law,  
22 the period covered by an audit may not exceed two years from  
23 the date the claim was submitted to or adjudicated by a  
24 managed care company, nonprofit hospital or medical service  
25 organization, health benefit plan, third-party payor, pharmacy  
26 benefit manager, a health program administered by a department  
27 of the state, or any entity that represents those companies,

1 groups, or department. An audit may not be conducted six  
2 months past the date the pharmacy benefit management plan  
3 terminated its contract to adjudicate claims with a pharmacy  
4 benefit manager, health plan administrator, or any other  
5 entity representing those companies.

6 (15) An audit may not be initiated or scheduled  
7 during the first five calendar days of any month.

8 (b) The entity shall provide the pharmacy with a  
9 written report of the audit and comply with the following  
10 requirements:

11 (1) The preliminary audit report shall be delivered  
12 to the pharmacy within 90 days after the conclusion of the  
13 audit, with a reasonable extension to be granted upon request.

14 (2) A pharmacy shall be allowed at least 30 days  
15 following receipt of the preliminary audit report in which to  
16 produce documentation to address any discrepancy found during  
17 the audit, with a reasonable extension to be granted upon  
18 request.

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

23 (4) The audit documents shall be signed by the  
24 auditors assigned to the audit. The acknowledgement or receipt  
25 shall be signed by the auditor and the audit report shall  
26 contain clear contact information of the representative of the  
27 auditing organization.

1           (5) Recoupments of any disputed funds, or repayment  
2 of funds to the entity by the pharmacy if permitted pursuant  
3 to contractual agreement, shall occur after final internal  
4 disposition of the audit, including the appeals process as set  
5 forth in Section 6. If the identified discrepancy for an  
6 individual audit exceeds twenty-five thousand dollars  
7 (\$25,000), future payments in excess of that amount to the  
8 pharmacy may be withheld pending finalization of the audit.

9           (6) Interest shall not accrue during the audit  
10 period.

11           (7) Each entity conducting an audit shall provide a  
12 copy of the final audit report, after completion of any review  
13 process, to the plan sponsor in a manner pursuant to a  
14 contract.

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

18           (b) If, following the appeal, the entity finds that  
19 an unfavorable audit report or any portion thereof is  
20 unsubstantiated, the entity shall dismiss the audit report or  
21 that portion without the necessity of any further action.

22           (c) If, following the appeal, any of the issues  
23 raised in the appeal are not resolved to the satisfaction of  
24 either party, that party may ask for mediation of those  
25 unresolved issues unless other remedies are granted under the  
26 terms of the contract. A certified mediator shall be chosen by  
27 agreement of the parties from the mediators list maintained by

1 the Alabama Supreme Court. The cost of mediation shall be  
2 borne by agreement of the parties or by the decision of the  
3 mediator.

4 Section 7. Notwithstanding any other provision in  
5 this act or state or federal law, the entity conducting the  
6 audit may not use the accounting practice of extrapolation in  
7 calculating recoupments or penalties for audits. An  
8 extrapolation audit means an audit of a sample of prescription  
9 drug benefit claims submitted by a pharmacy to the entity  
10 conducting the audit that is then used to estimate audit  
11 results for a larger batch or group of claims not reviewed by  
12 the auditor. Future fills or refills beyond the current claim  
13 date may not be subject to recoupment due to an assumption of  
14 error under extrapolation procedure.

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

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

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Health ..... 23-FEB-12

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Yeas 99, Nays 0, Abstains 1

Greg Pappas  
Clerk