

1 SB383
2 139990-3
3 By Senators Bussman and Beasley
4 RFD: Small Business
5 First Read: 01-MAR-12

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to audits of pharmacy records; to establish
12 minimum and uniform standards and criteria for the audit of
13 pharmacy records by or on behalf of certain entities; to
14 prescribe the procedures for conducting an audit; to provide
15 for an appeal process; and to provide that an entity
16 conducting an audit may not use the accounting practice of
17 extrapolation in calculating recoupments or penalties for
18 audits.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

24 (1) HEALTH BENEFIT PLAN. Any individual or group
25 plan, employee welfare benefit plan, policy, or contract for
26 health care services issued, delivered, issued for delivery,

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

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

22 (3) PHARMACY BENEFIT MANAGEMENT PLAN. An arrangement
23 for the delivery of pharmacist services in which a pharmacy
24 benefit manager undertakes to administer the payment or
25 reimbursement of any of the costs of pharmacist services for
26 an enrollee on a prepaid or insured basis that contains one or

1 more incentive arrangements intended to influence the cost or
2 level of pharmacist services between the plan sponsor and one
3 or more pharmacies with respect to the delivery of pharmacist
4 services and requires or creates benefit payment differential
5 incentives for enrollees to use under contract with the
6 pharmacy benefit manager.

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

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

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

1 Section 4. This act shall apply to any audit of the
2 records of a pharmacy conducted by a managed care company,
3 nonprofit hospital or medical service organization, health
4 benefit plan, third-party payor, pharmacy benefit manager, a
5 health program administered by a department of the state, or
6 any entity that represents those companies, groups, or
7 department.

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

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

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

1 (3) The entity conducting the on-site audit may not
2 interfere with the delivery of pharmacist services to a
3 patient and shall utilize every effort to minimize
4 inconvenience and disruption to pharmacy operations during the
5 audit process.

6 (4) An audit that involves clinical or professional
7 judgment shall be conducted by or in consultation with a
8 licensed pharmacist.

9 (5) The audit shall not consider as fraud any
10 clerical or record-keeping error, such as a typographical
11 error, scrivener's error, or computer error regarding a
12 required document or record; however, such errors may be
13 subject to recoupment. The pharmacy shall have the right to
14 submit amended claims through an online submission to correct
15 clerical or record-keeping errors in lieu of recoupment of a
16 claim where no actual financial harm to the patient or plan
17 has occurred, provided that the prescription was dispensed
18 according to prescription documentation requirements set forth
19 by the Alabama Pharmacy Act and within the plan limits. The
20 pharmacy shall not be subject to recoupment of funds by the
21 pharmacy benefits manager unless the pharmacy benefits manager
22 can provide proof of intent to commit fraud or such error
23 results in actual financial harm to the pharmacy benefits
24 manager, a health insurance plan managed by the pharmacy
25 benefits manager, or a consumer. A person shall not be subject
26 to criminal penalties for errors provided for in this

1 subsection without proof of intent to commit fraud, waste, or
2 abuse.

3 (6) An entity conducting an audit shall not require
4 any documentation that is not required by state and federal
5 law or Alabama Medicaid. The information shall be considered
6 to be valid if documented on the prescription, computerized
7 treatment notes, pharmacy system, or other acceptable medical
8 records.

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

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

20 (9) A pharmacy may use the records of a hospital,
21 physician, or other authorized practitioner of the healing
22 arts for drugs or medicinal supplies written or transmitted by
23 any means of communication for purposes of validating the
24 pharmacy record with respect to orders or refills of a legend
25 or narcotic drug.

1 (10) Reasonable costs associated with the audit
2 shall be the responsibility of the auditing entity with the
3 exception of Alabama Medicaid if the claims sample exceeds 100
4 unique prescription hard copies.

5 (11) A finding of an overpayment or an underpayment
6 may be a projection based on the number of patients served
7 having a similar diagnosis or on the number of similar orders
8 or refills for similar drugs, except that recoupment shall be
9 based on the actual overpayment or underpayment of actual
10 claims.

11 (12) A finding of an overpayment may not include the
12 cost of the drugs that were dispensed in accordance with the
13 prescriber's orders, provided the prescription was dispensed
14 according to prescription documentation requirements set forth
15 by the Alabama Pharmacy Act and within the plan limits. A
16 finding of an overpayment may not include the dispensing fee
17 amount unless:

- 18 a. A prescription was not actually dispensed.
- 19 b. The prescriber denied authorization.
- 20 c. The prescription dispensed was a medication error
21 by the pharmacy.
- 22 d. The identified overpayment is solely based on an
23 extra dispensing fee.

24 (13) Each pharmacy shall be audited under the same
25 standards and parameters as other similarly situated
26 pharmacies audited by the entity and must be audited under

1 rules applicable to the contractor and time period of the
2 prescription.

3 (14) Where not superseded by state or federal law,
4 the period covered by an audit may not exceed two years from
5 the date the claim was submitted to or adjudicated by a
6 managed care company, nonprofit hospital or medical service
7 organization, health benefit plan, third-party payor, pharmacy
8 benefit manager, a health program administered by a department
9 of the state, or any entity that represents those companies,
10 groups, or department. An audit may not be conducted six
11 months past the date the pharmacy benefit management plan
12 terminated its contract to adjudicate claims with a pharmacy
13 benefit manager, health plan administrator, or any other
14 entity representing those companies.

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

17 (b) The entity shall provide the pharmacy with a
18 written report of the audit and comply with the following
19 requirements:

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

23 (2) A pharmacy shall be allowed at least 30 days
24 following receipt of the preliminary audit report in which to
25 produce documentation to address any discrepancy found during

1 the audit, with a reasonable extension to be granted upon
2 request.

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

7 (4) The audit documents shall be signed by the
8 auditors assigned to the audit. The acknowledgement or receipt
9 shall be signed by the auditor and the audit report shall
10 contain clear contact information of the representative of the
11 auditing organization.

12 (5) Recoupments of any disputed funds, or repayment
13 of funds to the entity by the pharmacy if permitted pursuant
14 to contractual agreement, shall occur after final internal
15 disposition of the audit, including the appeals process as set
16 forth in Section 6. If the identified discrepancy for an
17 individual audit exceeds twenty-five thousand dollars
18 (\$25,000), future payments in excess of that amount to the
19 pharmacy may be withheld pending finalization of the audit.

20 (6) Interest shall not accrue during the audit
21 period.

22 (7) Each entity conducting an audit shall provide a
23 copy of the final audit report, after completion of any review
24 process, to the plan sponsor in a manner pursuant to a
25 contract.

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

4 (b) If, following the appeal, the entity finds that
5 an unfavorable audit report or any portion thereof is
6 unsubstantiated, the entity shall dismiss the audit report or
7 that portion without the necessity of any further action.

8 (c) If, following the appeal, any of the issues
9 raised in the appeal are not resolved to the satisfaction of
10 either party, that party may ask for mediation of those
11 unresolved issues unless other remedies are granted under the
12 terms of the contract. A certified mediator shall be chosen by
13 agreement of the parties from the mediators list maintained by
14 the Alabama Supreme Court. The cost of mediation shall be
15 borne by agreement of the parties or by the decision of the
16 mediator.

17 Section 7. Notwithstanding any other provision in
18 this act or state or federal law, the entity conducting the
19 audit may not use the accounting practice of extrapolation in
20 calculating recoupments or penalties for audits. An
21 extrapolation audit means an audit of a sample of prescription
22 drug benefit claims submitted by a pharmacy to the entity
23 conducting the audit that is then used to estimate audit
24 results for a larger batch or group of claims not reviewed by
25 the auditor. Future fills or refills beyond the current claim

1 date may not be subject to recoupment due to an assumption of
2 error under extrapolation procedure.

3 Section 8. This act does not apply to any audit,
4 review, or investigation that involves alleged fraud, willful
5 misrepresentation, or waste abuse.

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

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Senate

Read for the first time and referred to the Senate
committee on Small Business..... 01-MAR-12

Read for the second time and placed on the calen-
dar with 1 substitute and..... 05-APR-12

Read for the third time and passed as amended 12-APR-12

Yeas 28
Nays 0

Patrick Harris
Secretary