

SENATE BILL No. 138

By Committee on Public Health and Welfare

2-8

1 AN ACT concerning pharmacy; creating the pharmacy audit integrity act.

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3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. Sections 1 through 6, and amendments thereto, shall be
5 known and may be cited as the pharmacy audit integrity act.

6 Sec. 2. As used in this act, “pharmacy benefits manager” or “PBM”
7 means a person, business or other entity that performs pharmacy benefits
8 management. The term includes a person or entity acting for a PBM in
9 contractual or employment relationship in the performance of pharmacy
10 benefits management for a managed care company, not-for-profit hospital
11 or medical service organization, insurance company, third-party payor or
12 health program administered by the state board of pharmacy.

13 Sec. 3. (a) The entity conducting the audit shall follow the following
14 procedures:

15 (1) An entity conducting an on-site audit must give the pharmacy at
16 least two weeks written notice before conducting an initial audit;

17 (2) an audit that involves clinical or professional judgment must be
18 conducted by or in consultation with a pharmacist licensed in the state of
19 the audit or the state board of pharmacy;

20 (3) the period covered by the audit may not exceed two years from
21 the date that the claim was submitted to or adjudicated by the entity;

22 (4) the audit may not take place during the first seven days of the
23 month due to the high volume of prescriptions filled during that time
24 unless otherwise consented to by the pharmacy;

25 (5) the pharmacy may use the records of a hospital, physician or
26 other authorized practitioner to validate the pharmacy record;

27 (6) any legal prescription, in compliance with the requirements of
28 the state board of pharmacy, may be used to validate claims in connection
29 with prescriptions, refills or changes in prescriptions;

30 (7) each pharmacy shall be audited under the same standards and
31 parameters as other similarly situated pharmacies; and

32 (8) the entity conducting the audit must establish a written appeals
33 process. The appeals process shall include appeals of preliminary reports
34 and final reports. If either party is not satisfied with the appeal, that party
35 may seek mediation.

36 (b) The entity conducting the audit shall also comply with the

1 following requirements:

2 (1) A finding of overpayment or underpayment must be based
3 on the actual overpayment or underpayment and not a projection based on
4 the number of patients served having a similar diagnosis or on the
5 number of similar orders or refills for similar drugs;

6 (2) calculations of overpayments shall not include dispensing
7 fees;

8 (3) the entity conducting the audit shall not use extrapolation
9 in calculating the recoupments or penalties for audits;

10 (4) the auditing company or agent may not receive payment
11 based on a percentage of the amount recovered; and

12 (5) interest may not accrue during the audit period.

13 Sec. 4. (a) Any preliminary audit report must be delivered to
14 the pharmacy within 60 days after the conclusion of the audit. Any
15 pharmacy shall be allowed at least 30 days following receipt of the
16 preliminary audit to provide documentation to address any discrepancy
17 found in the audit. Any final audit report shall be delivered to the
18 pharmacy within 90 days after receipt of the preliminary audit report or
19 final appeal, whichever is later.

20 (b) No charge backs, recoupment or other penalties may be
21 assessed until the appeal process has been exhausted and the final report
22 issued. Unless otherwise required by the federal or state law, any audit
23 information may not be shared. Auditors shall only have access to
24 previous audit reports on a particular pharmacy conducted by that same
25 entity.

26 Sec. 5. Any auditing entity must provide a copy of the final
27 report, including the disclosure of any money recouped in the audit, to the
28 plan sponsor and the state board of pharmacy.

29 Sec. 6. This act shall apply to contracts entered into, amended,
30 extended or renewed on or after January 1, 2011. This act shall not apply
31 to any investigative audit that involves allegations of fraud or willful
32 misrepresentation.

33 Sec. 7. This act shall take effect and be in force from and after its
34 publication in the statute book.

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