

Substitute for SENATE BILL No. 138

By Committee on Public Health and Welfare

3-11

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 seven days 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 licensed pharmacist;

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

21 (4) the pharmacy may request an extension not to exceed seven days
22 from the date of an originally scheduled on-site audit;

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

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

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

30 (8) the entity conducting the audit must establish a written appeals
31 process.

32 (b) The entity conducting the audit shall also comply with the
33 following requirements:

34 (1) A finding of overpayment or underpayment must be based on the
35 actual overpayment or underpayment and not a projection based on the

1 number of patients served having a similar diagnosis or on the number of
2 similar orders or refills for similar drugs;

3 (2) the entity conducting the audit shall not use extrapolation in
4 calculating the recoupments or penalties for audits, unless required by state
5 or federal contracts;

6 (3) the auditing company or agent may not receive payment based on
7 a percentage of the amount recovered, unless required by contracts; and

8 (4) interest may not accrue during the audit period.

9 Sec. 4. (a) Any preliminary audit report must be delivered to the
10 pharmacy within 60 days after the conclusion of the audit. Any pharmacy
11 shall be allowed at least 30 days following receipt of the preliminary audit
12 to provide documentation to address any discrepancy found in the audit.
13 Any final audit report shall be delivered to the pharmacy within 120 days
14 after receipt of the preliminary audit report or final appeal, whichever is
15 later.

16 (b) Recoupment of any disputed funds or repayment of funds to the
17 entity by the pharmacy, if permitted pursuant to contracts, shall occur, to
18 the extent demonstrated or documented in the pharmacy audit findings,
19 after final internal disposition of the audit including the appeals process. If
20 the identified discrepancy for an individual audit exceeds \$20,000, any
21 future payments to the pharmacy may be withheld pending finalization of
22 the audit. 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, upon request of the plan sponsor, shall
27 provide a copy of the final report, including the disclosure of any money
28 recouped in the audit. The pharmacy may provide a copy of the report to
29 the commissioner of insurance, provided such report shall not contain any
30 personally identifiable health information in violation of the provisions of
31 the health insurance portability and accountability act of 1996 (Pub. L. No.
32 104-191).

33 Sec. 6. This act shall apply to contracts between an auditing entity
34 and a pharmacy entered into, extended or renewed on or after the effective
35 date of this act. This act shall not apply to any audit, review or
36 investigation that is initiated based upon suspected or alleged fraud, willful
37 misrepresentation or abuse.

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

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