

SESSION OF 2011

**SUPPLEMENTAL NOTE ON  
SUBSTITUTE FOR SENATE BILL NO. 138**

As Recommended by Senate Committee on  
Public Health and Welfare

**Brief\***

Sub. for SB 138 would create the Pharmacy Audit Integrity Act. The bill would define a Pharmacy Benefits Manager (PBM) under the Act, outline the procedures for conducting an audit, and provide for an appeals process. The Act would apply to contracts between an auditing entity and a pharmacy entered into, extended or renewed on or after July 1, 2011. The Act would not apply to audits, reviews or investigations initiated based upon suspected or alleged fraud, willful misrepresentation or abuse.

***Definition***

The bill would define a PBM as a person, business or other entity that performs pharmacy benefits management and would include a person or other entity acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, not-for-profit hospital or medical service organization, insurance company, third-party payor or health program administered by the State Board of Pharmacy.

***Audit Procedures***

The bill would require entities conducting pharmacy audits to comply with the following procedures:

---

\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Provide a minimum of seven days written notice to a pharmacy prior to conducting an on-site initial audit;
- Require audits that involve clinical or professional judgment to be conducted by or done in consultation with a licensed pharmacist;
- Limit the period covered by an audit to two years from the date of claim submission to or adjudication by the entity conducting the audit;
- Allow pharmacies to request an extension of not more than seven days from the date of an originally scheduled on-site audit;
- Permit pharmacies to use the records of a hospital, physician or other authorized practitioner to validate the pharmacy record;
- Allow the use of any legal prescription which complies with the regulations of the State Board of Pharmacy to validate claims for prescriptions, refills or changes in prescriptions;
- Require similarly situated pharmacies to be audited under the same standards and parameters; and
- Require an auditing entity to establish a written appeals process.

### ***Audit Calculations***

The bill would require entities conducting an audit to follow these requirements with regard to calculations:

- Overpayment and underpayment amounts would be based on actual amounts and not projections;

- Extrapolation could not be used in calculating recoupments or penalties for audits, unless required by state or federal contracts;
- Auditing company payments could not be based on a percentage of the recovery amount, unless required by contracts; and
- Accrual of interest during the audit period would not be permitted.

### ***Audit Report Timeline and Appeals***

The bill would:

- Require delivery of the preliminary audit report to the pharmacy within sixty days after the audit's conclusion;
- Allow a minimum of thirty days following receipt of the preliminary audit for the pharmacy to provide documentation on any audit discrepancies;
- Require delivery of a final audit report to the pharmacy within 120 days after receipt of a preliminary audit report or final appeal, whichever is later;
- Require recoupment of disputed funds or repayment of funds to the entity by the pharmacy, if allowed by contracts, to the extent demonstrated or documented in the pharmacy audit findings, after final internal disposition of the audit including the appeals process;
- Allow for the withholding of future payments to a pharmacy if an identified discrepancy for an individual audit exceeds \$20,000, pending finalization of the audit;
- Protect the confidentiality of audit information, unless disclosure would be required by federal or state law;

- Limit an auditor's access to previous audit reports of a pharmacy to those performed by the same entity;
- Require an auditing entity to provide a copy of the final report, including the disclosure of any money recouped, upon request of the plan sponsor; and
- Allow a pharmacy to provide a copy of the report to the Insurance Commissioner, provided the report does not contain any personally identifiable health information in violation of the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

### **Background**

The Senate Committee on Public Health and Welfare recommended a substitute bill to incorporate compromise amendments agreed to by parties on both sides of the original bill. Among the adopted amendments are: allowing pharmacies to request an extension of a scheduled on-site audit for a period not to exceed seven days from the originally scheduled audit date, instead of prohibiting audits during the first seven days of the month; allowing extrapolation in calculating recoupments or penalties for audits only when required by state or federal contracts; requiring that recoupments of disputed funds or repayment of funds by a pharmacy (if permitted pursuant to contracts) occur to the extent demonstrated or documented in the pharmacy audit findings, after internal disposition of the audit including the appeals process; allowing the withholding of future payments to a pharmacy pending finalization of an audit, if the identified discrepancy for an individual audit exceeds \$20,000; and removing the retroactive application of the Act to contracts entered into, extended or renewed on or after January 1, 2011, and instead making the Act applicable to such contracts on or after July 1, 2011.

SB 138 was introduced by the Senate Committee on Public Health and Welfare at the request of the Kansas Pharmacists Association. Testimony in favor of the original bill

was presented to the Committee by a representative of the Kansas Pharmacists Association (KPhA). Written testimony in favor of the bill was submitted by a representative of the Kansas Independent Pharmacy Service Corporation (KPSC) and a pharmacy owner. A KPhA representative stated the bill would give an audited pharmacy at least two weeks written notice before conducting an initial audit; limit the period covered by and audit to two years; identify times of high-volume prescriptions as off-limits for conducting an audit; and base an audit on the actual overpayment or underpayment and not on projections based on the number of patients served with a similar diagnosis or on the number of similar orders or refills for similar drugs. A KPSC representative stated in written testimony that the number and frequency of audits performed of retail pharmacies have increased dramatically in recent years, to the point that such practices have become disruptive to the efficiency of pharmacies, and in some case, represent burdensome business practices by PBMs.

Opponents of the original bill before the Senate Committee included a representative of Medco Health Solutions, Inc. and Affiliates presenting oral testimony; and representatives of CVS Caremark, the Kansas Association of Health Plans (KAHP), and Prime Therapeutics, LLC., submitting written testimony. A representative of Medco Health Solutions, Inc. stated that the audits are necessary to recoup monies incorrectly paid for claims with improper quantity, improper days supply, improper coding, duplicative claims and other irregularities. A Medco representative proposed several amendments to the bill. In written testimony, a representative of Prime Therapeutics stated an effective audit process not only serves as a deterrent to fraudulent activities, but enables the company to ensure a higher degree of formulary compliance, which saves money for plan sponsors and policy holders.

The fiscal note prepared by the Division of the Budget on the original bill states that the Board of Pharmacy indicated the bill would have no fiscal effect on state revenues or expenditures.