

HOUSE BILL No. 2671

By Committee on Health and Human Services

2-13

1 AN ACT concerning the pharmacy audit integrity act; amending K.S.A.
2 2013 Supp. 65-16,123, 65-16,124 and 65-16,126 and repealing the
3 existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 65-16,123 is hereby amended to read as
7 follows: 65-16,123. (a) ~~The~~ *An* entity conducting ~~the audit-an on-site audit~~
8 *of a pharmacy* shall follow the following procedures:

9 (1) ~~An entity conducting an on-site audit must~~ Give the pharmacy at
10 least seven days written notice before conducting an initial audit;

11 (2) *conduct* an audit that involves clinical or professional judgment
12 ~~must be~~ conducted by or in consultation with a licensed pharmacist;

13 (3) ~~the period covered~~ *cover a period* by the audit ~~may of~~ not to
14 exceed two years from the date that the claim was submitted to or
15 adjudicated by the entity;

16 (4) ~~the pharmacy may request~~ *grant to a pharmacy* an extension not
17 to exceed seven days from the date of an originally scheduled on-site audit
18 *if requested*;

19 (5) ~~the pharmacy may authorize the pharmacy to~~ use the records of a
20 hospital, physician or other authorized practitioner to validate the
21 pharmacy record;

22 (6) *use* any legal prescription, in compliance with the requirements of
23 the state board of pharmacy, ~~may be used~~ to validate claims in connection
24 with prescriptions, refills or changes in prescriptions;

25 (7) *audit* each pharmacy ~~shall be audited~~ under the same standards
26 and parameters as other similarly situated pharmacies *in this state and*
27 *apply no standard greater than that required by the laws of the state and*
28 *the state board of pharmacy*; and

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

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

33 (1) *Base* a finding of overpayment or underpayment ~~must be based~~ on
34 the actual overpayment or underpayment and not a projection based on the
35 number of patients served having a similar diagnosis or on the number of
36 similar orders or refills for similar drugs;

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

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

6 (4) ~~interest may~~ not accrue *interest* during the audit period; *and*

7 (5) (A) *deliver any preliminary audit report to the pharmacy within*
8 *60 days after the conclusion of the audit;*

9 (B) *allow any pharmacy at least 30 days following receipt of the*
10 *preliminary audit to provide documentation to address any discrepancy*
11 *found in the audit; and*

12 (C) *deliver any final audit report to the pharmacy within 120 days*
13 *after receipt of the preliminary audit report or final appeal, whichever is*
14 *later.*

15 (c) ~~This section shall take effect on and after July 1, 2011.~~ *Any party*
16 *aggrieved by a violation of the provisions of this section may maintain in*
17 *the appropriate district court a civil action for damages or for injunctive*
18 *relief, or both an action for damages and for injunctive relief, against a*
19 *person violating the provisions of this section.*

20 (d) *A violation of this section shall constitute a class C misdemeanor.*

21 Sec. 2. K.S.A. 2013 Supp. 65-16,124 is hereby amended to read as
22 follows: 65-16,124. (a) ~~Any preliminary audit report must be delivered to~~
23 ~~the pharmacy within 60 days after the conclusion of the audit. Any~~
24 ~~pharmacy shall be allowed at least 30 days following receipt of the~~
25 ~~preliminary audit to provide documentation to address any discrepancy~~
26 ~~found in the audit. Any final audit report shall be delivered to the~~
27 ~~pharmacy within 120 days after receipt of the preliminary audit report or~~
28 ~~final appeal, whichever is later.~~

29 ~~(b)~~—Recoupment of any disputed funds or repayment of funds to the
30 entity by the pharmacy, if permitted pursuant to contracts, shall occur, to
31 the extent demonstrated or documented in the pharmacy audit findings,
32 after final internal disposition of the audit including the appeals process. If
33 the identified discrepancy for an individual audit exceeds \$20,000, any
34 future payments to the pharmacy may be withheld pending finalization of
35 the audit. Unless otherwise required by ~~the~~ federal or state law, ~~any~~ audit
36 information may not be shared. Auditors shall only have access to previous
37 audit reports on a particular pharmacy conducted by that same entity.

38 ~~(c)~~—~~This section shall take effect on and after July 1, 2011.~~

39 Sec. 3. K.S.A. 2013 Supp. 65-16,126 is hereby amended to read as
40 follows: 65-16,126. (a) This act shall apply to contracts between an
41 auditing entity and a pharmacy entered into, extended or renewed on or
42 after the effective date of this act.

43 (b) *The provisions of subsections (a) and (b) of K.S.A. 2013 Supp. 65-*

1 *16,123, and amendments thereto, shall be incorporated into and made a*
2 *part of all contracts between an auditing entity and a pharmacy entered*
3 *into, extended or renewed on or after July 1, 2014.* This act shall not apply
4 to any audit, review or investigation that is initiated based upon suspected
5 or alleged fraud, willful misrepresentation or abuse.

6 ~~(b) This section shall take effect on and after July 1, 2014.~~

7 Sec. 4. K.S.A. 2013 Supp. 65-16,123, 65-16,124 and 65-16,126 are
8 hereby repealed.

9 Sec. 5. This act shall take effect and be in force from and after its
10 publication in the statute book.