

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2314 _____
Page 2-10 Section 1 Lines _____
Of the printed Bill
Of the Engrossed Bill

On page 2, line 1 through page 10, line 2, by deleting Section 1 in its entirety and inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: TJ Marti _____

Reading Clerk

1 "SECTION 1. AMENDATORY 59 O.S. 2011, Section 356.2, is
2 amended to read as follows:

3 Section 356.2 A. The entity conducting an audit of a pharmacy
4 shall:

5 1. Identify and describe the audit procedures in the pharmacy
6 contract. ~~Unless otherwise agreed to in contract by both parties,~~
7 ~~prescription~~ Prescription claim documentation and record-keeping
8 requirements shall not exceed the requirements set forth by the
9 Oklahoma Pharmacy Act or other applicable state or federal laws or
10 regulations;

11 2. For an ~~on-site~~ audit, including, but not limited to, an on-
12 site audit, a desk audit, request for documentation related to the
13 dispensing of a prescription drug or any reimbursed activity by a
14 pharmacy provider, give the pharmacy written notice, by certified
15 letter to the pharmacy and the pharmacy's contracting agent,
16 including identification of prescription numbers to be audited, at
17 least two (2) weeks prior to conducting the ~~on-site~~ audit. The
18 pharmacy shall have the opportunity to reschedule the audit no more
19 than seven (7) days from the date designated on the original audit
20 notification;

21 3. For an ~~on-site~~ audit, not interfere with the delivery of
22 pharmacist services to a patient and shall utilize every reasonable
23 effort to minimize inconvenience and disruption to pharmacy
24 operations during the audit process;

1 4. Conduct any audit involving clinical or professional
2 judgment by means of or in consultation with a licensed pharmacist;

3 5. Not consider as fraud any clerical or record-keeping error,
4 such as a typographical error, scrivener's error, or computer error
5 ~~regarding a required document or record; however, including, but not~~
6 limited to, a miscalculated day supply of less than twenty-five
7 percent (25%) error, prescription written date or prescription
8 origin code, unless there is actual financial harm to the health
9 insurer or patient, such errors ~~may~~ shall not be subject to
10 recoupment. The pharmacy shall have the right to submit amended
11 claims to correct clerical or record-keeping errors in lieu of
12 recoupment, provided that the prescription was dispensed according
13 to prescription documentation requirements set forth by the Oklahoma
14 Pharmacy Act. To the extent that an audit results in the
15 identification of any clerical or record-keeping errors such as
16 typographical errors, scrivener's errors or computer errors in a
17 required document or record, the pharmacy shall not be subject to
18 recoupment of funds by the pharmacy benefits manager unless the
19 pharmacy benefits manager can provide proof of intent to commit
20 fraud or such error results in actual financial harm to ~~the pharmacy~~
21 ~~benefits manager,~~ a health insurance plan managed by the pharmacy
22 benefits manager or a consumer. A person shall not be subject to
23 criminal penalties for errors provided for in this paragraph without
24 proof of intent to commit fraud;

1 6. Permit a pharmacy to use the records of a hospital,
2 physician, or other authorized practitioner of the healing arts for
3 drugs or medicinal supplies written or transmitted by any means of
4 communication for purposes of validating the pharmacy record with
5 respect to orders or refills of a legend or narcotic drug;

6 7. Base a finding of an overpayment or underpayment on a
7 projection based on the number of patients served having similar
8 diagnoses or on the number of similar orders or refills for similar
9 drugs; provided, recoupment of claims shall be based on the actual
10 overpayment or underpayment of each identified claim. A projection
11 for overpayment or underpayment may be used to determine recoupment
12 as part of a settlement as agreed to by the pharmacy;

13 8. Not include the dispensing fee amount or the actual invoice
14 cost of the prescription dispensed in a finding of an overpayment
15 unless a prescription was not actually dispensed or a physician
16 denied authorization ~~or as otherwise agreed to by contract;~~

17 9. Audit each pharmacy under ~~the same~~ identical standards,
18 regularity, and parameters as other similarly situated pharmacies
19 ~~audited by the entity~~ and all pharmacies owned or managed by the
20 pharmacy benefits manager conducting or having conducted the audit;

21 10. Not exceed ~~two (2) years~~ one (1) year from the date the
22 claim was submitted to or adjudicated by a managed care company,
23 nonprofit hospital or medical service organization, insurance
24 company, third-party payor, pharmacy benefits manager, a health

1 program administered by a department of this state, or any entity
2 that represents the companies, groups, or departments for the period
3 covered by an audit;

4 11. Not schedule or initiate an audit during the first seven
5 (7) calendar days of any month due to the high volume of
6 prescriptions filled in the pharmacy during that time unless
7 otherwise consented to by the pharmacy; ~~and~~

8 12. Disclose to any plan sponsor whose claims were included in
9 the audit any money recouped in the audit; and

10 13. Not require pharmacists to break open packaging labeled
11 "for single-patient-use only". Packaging labeled "for single-use
12 only" shall be deemed to be the smallest package size available.

13 B. 1. A health benefits plan issuer or pharmacy benefits
14 manager that conducts wholesale purchase review during an audit of a
15 pharmacist or pharmacy shall not require the pharmacist or pharmacy
16 to provide a full dispensing report. Wholesaler invoice reviews
17 shall be limited to verification of purchase inventory specific to
18 the pharmacy claims paid by the health benefits plan or pharmacy
19 benefits manager conducting the audit.

20 2. A health benefits plan issuer or pharmacy benefits manager
21 shall reverse a finding of a discrepancy if:

22 a. the National Drug Code for the dispensed drug is in a
23 quantity that is a subunit or multiple of the drug

24

1 purchased by the pharmacist or pharmacy as supported
2 by a wholesale invoice,

3 b. the pharmacist or pharmacy dispensed the correct
4 quantity of the drug according to the prescription,
5 and

6 c. the drug dispensed by the pharmacist or pharmacy
7 shares all but the last two (2) digits of the National
8 Drug Code of the drug reflected on the supplier
9 invoice.

10 3. A health benefits plan issuer or pharmacy benefits manager
11 shall accept as evidence, subject to validation, to support the
12 validity of a pharmacy claim related to a dispensed drug:

13 a. redacted copies of supplier invoices in the
14 pharmacist's or pharmacy's possession, or

15 b. invoices and any supporting documents from any
16 supplier as authorized by federal or state law to
17 transfer ownership of the drug acquired by the
18 pharmacist or pharmacy.

19 4. A health benefits plan issuer or pharmacy benefits manager
20 shall provide, no later than five (5) business days after the date
21 of a request by the pharmacist or pharmacy, any supporting documents
22 the pharmacist's or pharmacy's suppliers provided to the health
23 benefits plan issuer or pharmacy benefits manager.

1 C. A pharmacy may provide the pharmacy's computerized patterned
2 medical records or the records of a hospital, physician, or other
3 authorized practitioner of the healing arts for drugs or medicinal
4 supplies written or transmitted by any means of communication for
5 purposes of supporting the pharmacy record with respect to orders or
6 refills of a legend or narcotic drug.

7 ~~E.~~ D. The entity conducting the audit shall not audit more than
8 ~~seventy-five (75)~~ fifty prescriptions, with specific date of
9 service, per initial annual audit. The annual audit total shall be
10 inclusive of all prescription-related documentation requests from
11 the health insurer, pharmacy benefits manager or any third-party
12 company conducting audits on behalf of the health insurer or
13 pharmacy benefits manager during a calendar year.

14 ~~D.~~ E. If paper copies of records are requested by the entity
15 conducting the audit, the entity shall pay twenty-five cents (\$0.25)
16 per page to cover the costs incurred by the pharmacy. The entity
17 conducting the audit shall provide the pharmacy with an invoice form
18 for reimbursement of the copied records.

19 ~~E.~~ F. The entity conducting the audit shall provide the
20 pharmacy with a written report of the audit and shall:

21 1. Deliver a preliminary audit report to the pharmacy within
22 ~~ninety (90)~~ forty-five (45) calendar days after conclusion of the
23 audit;

1 2. Allow the pharmacy at least ~~sixty (60)~~ forty-five (45)
2 calendar days following receipt of the preliminary audit report in
3 which to produce documentation to address any discrepancy found
4 during the audit; provided, however, a pharmacy may request an
5 extension, not to exceed an additional ~~sixty (60)~~ forty-five (45)
6 calendar days;

7 3. Deliver a final audit report to the pharmacy signed by the
8 auditor within ~~one hundred twenty (120)~~ ninety (90) calendar days
9 after receipt of the preliminary audit report or ~~final~~ appeal, as
10 provided for in Section 356.3 of this title, whichever is later;

11 4. Allow the pharmacy at least ninety (90) calendar days
12 following receipt of the final audit report in which to produce
13 documentation to address any discrepancy disputed in the final
14 report; provided, however, a pharmacy may request an extension, not
15 to exceed an additional ninety (90) calendar days;

16 5. Recoup any disputed funds after final internal disposition
17 of the audit, including the appeals process as provided for in
18 Section 356.3 of this title. ~~Unless otherwise agreed by the~~
19 ~~parties, future payments to the pharmacy may be withheld pending~~
20 ~~finalization of the audit should the identified discrepancy exceed~~
21 ~~Twenty five Thousand Dollars (\$25,000.00); and~~

22 ~~5.~~ 6. Not accrue interest during the audit and appeal period.
23
24

1 ~~F.~~ G. Each entity conducting an audit shall provide a copy of
2 the final audit results, and a final audit report upon request,
3 after completion of any review process to the plan sponsor.

4 ~~G.~~ H. 1. The full amount of any recoupment on an ~~on-site~~ audit
5 shall be refunded to the plan sponsor. Except as provided for in
6 paragraph 2 of this subsection, a charge or assessment for an audit
7 shall not be based, directly or indirectly, on amounts recouped.

8 2. This subsection does not prevent the entity conducting the
9 audit from charging or assessing the responsible party, directly or
10 indirectly, based on amounts recouped if both of the following
11 conditions are met:

- 12 a. the plan sponsor and the entity conducting the audit
13 have a contract that explicitly states the percentage
14 charge or assessment to the plan sponsor, and
- 15 b. a commission to an agent or employee of the entity
16 conducting the audit is not based, directly or
17 indirectly, on amounts recouped.

18 ~~H.~~ I. Unless superseded by state or federal law, auditors shall
19 only have access to previous audit reports on a particular pharmacy
20 conducted by the auditing entity for the same pharmacy benefits
21 manager, health plan or insurer. An auditing vendor contracting
22 with multiple pharmacy benefits managers or health insurance plans
23 shall not use audit reports or other information gained from an
24

1 audit on a ~~particular~~ pharmacy to conduct another audit for a
2 different pharmacy benefits manager or health insurance plan."
3

4 57-2-11565 SH 03/02/20
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24