

1 SB383  
2 139990-4  
3 By Senators Bussman and Beasley  
4 RFD: Small Business  
5 First Read: 01-MAR-12

1 SB383

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4 ENROLLED, An Act,

5 Relating to audits of pharmacy records; to establish  
6 minimum and uniform standards and criteria for the audit of  
7 pharmacy records by or on behalf of certain entities; to  
8 prescribe the procedures for conducting an audit; to provide  
9 for an appeal process; and to provide that an entity  
10 conducting an audit may not use the accounting practice of  
11 extrapolation in calculating recouplements or penalties for  
12 audits.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. This act shall be known and may be cited  
15 as "The Pharmacy Audit Integrity Act."

16 Section 2. The following words shall have the  
17 following meanings as used in this act:

18 (1) HEALTH BENEFIT PLAN. Any individual or group  
19 plan, employee welfare benefit plan, policy, or contract for  
20 health care services issued, delivered, issued for delivery,  
21 or renewed in this state by a health care insurer, health  
22 maintenance organization, accident and sickness insurer,  
23 fraternal benefit society, nonprofit hospital service  
24 corporation, nonprofit medical service corporation, health  
25 care service plan, or any other person, firm, corporation,

1 joint venture, or other similar business entity that pays for  
2 insureds or beneficiaries in this state. The term includes,  
3 but is not limited to, entities created pursuant to Article 6,  
4 Chapter 4, Title 10, Code of Alabama 1975. A health benefit  
5 plan located or domiciled outside of the State of Alabama is  
6 deemed to be subject to this act if it receives, processes,  
7 adjudicates, pays, or denies claims for health care services  
8 submitted by or on behalf of patients, insureds, or  
9 beneficiaries who reside in Alabama.

10 (2) PHARMACY. A place licensed by the Alabama State  
11 Board of Pharmacy in which prescriptions, drugs, medicines,  
12 medical devices, chemicals, and poisons are sold, offered for  
13 sale, compounded, or dispensed and shall include all places  
14 whose title may imply the sale, offering for sale,  
15 compounding, or dispensing of prescriptions, drugs, medicines,  
16 chemicals, or poisons.

17 (3) PHARMACY BENEFIT MANAGEMENT PLAN. An arrangement  
18 for the delivery of pharmacist services in which a pharmacy  
19 benefit manager undertakes to administer the payment or  
20 reimbursement of any of the costs of pharmacist services for  
21 an enrollee on a prepaid or insured basis that contains one or  
22 more incentive arrangements intended to influence the cost or  
23 level of pharmacist services between the plan sponsor and one  
24 or more pharmacies with respect to the delivery of pharmacist  
25 services and requires or creates benefit payment differential

1 incentives for enrollees to use under contract with the  
2 pharmacy benefit manager.

3 (4) PHARMACY BENEFIT MANAGER. A business that  
4 administers the prescription drug or device portion of  
5 pharmacy benefit management plans or health insurance plans on  
6 behalf of plan sponsors, insurance companies, unions, and  
7 health maintenance organizations. The term includes a person  
8 or entity acting for a pharmacy benefit manager in a  
9 contractual or employment relationship in the performance of  
10 pharmacy benefits management for a managed care company,  
11 nonprofit hospital or medical service organization, insurance  
12 company, or third-party payor.

13 (5) PHARMACIST SERVICES. Offering for sale,  
14 compounding, or dispensing of prescriptions, drugs, medicines,  
15 chemicals, or poisons pursuant to a prescription. Pharmacist  
16 services also includes the sale or provision of, counseling  
17 of, or fitting of medical devices, including prosthetics and  
18 durable medical equipment.

19 Section 3. The purpose of this act is to establish  
20 minimum and uniform standards and criteria for the audit of  
21 pharmacy records by or on behalf of certain entities.

22 Section 4. This act shall apply to any audit of the  
23 records of a pharmacy conducted by a managed care company,  
24 nonprofit hospital or medical service organization, health  
25 benefit plan, third-party payor, pharmacy benefit manager, a

1 health program administered by a department of the state, or  
2 any entity that represents those companies, groups, or  
3 department.

4 Section 5. (a) The entity conducting an audit shall  
5 follow these procedures:

6 (1) The pharmacy contract shall identify and  
7 describe in detail the audit procedures.

8 (2) The entity conducting the on-site audit shall  
9 give the pharmacy written notice at least two weeks before  
10 conducting the initial on-site audit for each audit cycle. If  
11 the pharmacy benefit manager does not include their auditing  
12 guidelines within their provider manual, then the notice must  
13 include a documented checklist of all items being audited and  
14 the manual, including the name, date, and edition or volume,  
15 applicable to the audit and auditing guidelines. For on-site  
16 audits a pharmacy benefit manager shall also provide a list of  
17 material that is copied or removed during the course of an  
18 audit to the pharmacy. The pharmacy benefit manager may  
19 document this material on either a checklist or on an audit  
20 acknowledgement form. The pharmacy shall produce any items  
21 during the course of the audit or within 30 days of the  
22 on-site audit.

23 (3) The entity conducting the on-site audit may not  
24 interfere with the delivery of pharmacist services to a  
25 patient and shall utilize every effort to minimize

1 inconvenience and disruption to pharmacy operations during the  
2 audit process.

3 (4) An audit that involves clinical or professional  
4 judgment shall be conducted by or in consultation with a  
5 licensed pharmacist.

6 (5) The audit shall not consider as fraud any  
7 clerical or record-keeping error, such as a typographical  
8 error, scrivener's error, or computer error regarding a  
9 required document or record; however, such errors may be  
10 subject to recoupment. The pharmacy shall have the right to  
11 submit amended claims through an online submission to correct  
12 clerical or record-keeping errors in lieu of recoupment of a  
13 claim where no actual financial harm to the patient or plan  
14 has occurred, provided that the prescription was dispensed  
15 according to prescription documentation requirements set forth  
16 by the Alabama Pharmacy Act and within the plan limits. The  
17 pharmacy shall not be subject to recoupment of funds by the  
18 pharmacy benefits manager unless the pharmacy benefits manager  
19 can provide proof of intent to commit fraud or such error  
20 results in actual financial harm to the pharmacy benefits  
21 manager, a health insurance plan managed by the pharmacy  
22 benefits manager, or a consumer. A person shall not be subject  
23 to criminal penalties for errors provided for in this  
24 subsection without proof of intent to commit fraud, waste, or  
25 abuse.

1           (6) An entity conducting an audit shall not require  
2 any documentation that is not required by state and federal  
3 law or Alabama Medicaid. The information shall be considered  
4 to be valid if documented on the prescription, computerized  
5 treatment notes, pharmacy system, or other acceptable medical  
6 records.

7           (7) Unless superseded by state or federal law,  
8 auditors shall only have access to previous audit reports on a  
9 particular pharmacy conducted by the auditing entity for the  
10 same pharmacy benefits manager, health plan, or insurer. An  
11 auditing vendor contracting with multiple pharmacy benefits  
12 managers or health insurance plans shall not use audit reports  
13 or other information gained from an audit on a particular  
14 pharmacy to conduct another audit for a different pharmacy  
15 benefits manager or health insurance plan.

16           (8) Audit results shall be disclosed to the health  
17 benefit plan in a manner pursuant to contract terms.

18           (9) A pharmacy may use the records of a hospital,  
19 physician, or other authorized practitioner of the healing  
20 arts for drugs or medicinal supplies written or transmitted by  
21 any means of communication for purposes of validating the  
22 pharmacy record with respect to orders or refills of a legend  
23 or narcotic drug.

24           (10) Reasonable costs associated with the audit  
25 shall be the responsibility of the auditing entity with the

1 exception of Alabama Medicaid if the claims sample exceeds 100  
2 unique prescription hard copies.

3 (11) A finding of an overpayment or an underpayment  
4 may be a projection based on the number of patients served  
5 having a similar diagnosis or on the number of similar orders  
6 or refills for similar drugs, except that recoupment shall be  
7 based on the actual overpayment or underpayment of actual  
8 claims.

9 (12) A finding of an overpayment may not include the  
10 cost of the drugs that were dispensed in accordance with the  
11 prescriber's orders, provided the prescription was dispensed  
12 according to prescription documentation requirements set forth  
13 by the Alabama Pharmacy Act and within the plan limits. A  
14 finding of an overpayment may not include the dispensing fee  
15 amount unless:

- 16 a. A prescription was not actually dispensed.
- 17 b. The prescriber denied authorization.
- 18 c. The prescription dispensed was a medication error  
19 by the pharmacy.
- 20 d. The identified overpayment is solely based on an  
21 extra dispensing fee.

22 (13) Each pharmacy shall be audited under the same  
23 standards and parameters as other similarly situated  
24 pharmacies audited by the entity and must be audited under



1 rules applicable to the contractor and time period of the  
2 prescription.

3 (14) Where not superseded by state or federal law,  
4 the period covered by an audit may not exceed two years from  
5 the date the claim was submitted to or adjudicated by a  
6 managed care company, nonprofit hospital or medical service  
7 organization, health benefit plan, third-party payor, pharmacy  
8 benefit manager, a health program administered by a department  
9 of the state, or any entity that represents those companies,  
10 groups, or department. An audit may not be conducted six  
11 months past the date the pharmacy benefit management plan  
12 terminated its contract to adjudicate claims with a pharmacy  
13 benefit manager, health plan administrator, or any other  
14 entity representing those companies.

15 (15) An audit may not be initiated or scheduled  
16 during the first five calendar days of any month.

17 (b) The entity shall provide the pharmacy with a  
18 written report of the audit and comply with the following  
19 requirements:

20 (1) The preliminary audit report shall be delivered  
21 to the pharmacy within 90 days after the conclusion of the  
22 audit, with a reasonable extension to be granted upon request.

23 (2) A pharmacy shall be allowed at least 30 days  
24 following receipt of the preliminary audit report in which to  
25 produce documentation to address any discrepancy found during

1 the audit, with a reasonable extension to be granted upon  
2 request.

3 (3) A final audit report shall be delivered to the  
4 pharmacy within 180 days after receipt of the preliminary  
5 audit report or final appeal, as provided for in Section 6,  
6 whichever is later.

7 (4) The audit documents shall be signed by the  
8 auditors assigned to the audit. The acknowledgement or receipt  
9 shall be signed by the auditor and the audit report shall  
10 contain clear contact information of the representative of the  
11 auditing organization.

12 (5) Recoupments of any disputed funds, or repayment  
13 of funds to the entity by the pharmacy if permitted pursuant  
14 to contractual agreement, shall occur after final internal  
15 disposition of the audit, including the appeals process as set  
16 forth in Section 6. If the identified discrepancy for an  
17 individual audit exceeds twenty-five thousand dollars  
18 (\$25,000), future payments in excess of that amount to the  
19 pharmacy may be withheld pending finalization of the audit.

20 (6) Interest shall not accrue during the audit  
21 period.

22 (7) Each entity conducting an audit shall provide a  
23 copy of the final audit report, after completion of any review  
24 process, to the plan sponsor in a manner pursuant to a  
25 contract.

1           Section 6. (a) Each entity conducting an audit shall  
2 establish a written appeals process under which a pharmacy may  
3 appeal an unfavorable preliminary audit report to the entity.

4           (b) If, following the appeal, the entity finds that  
5 an unfavorable audit report or any portion thereof is  
6 unsubstantiated, the entity shall dismiss the audit report or  
7 that portion without the necessity of any further action.

8           (c) If, following the appeal, any of the issues  
9 raised in the appeal are not resolved to the satisfaction of  
10 either party, that party may ask for mediation of those  
11 unresolved issues unless other remedies are granted under the  
12 terms of the contract. A certified mediator shall be chosen by  
13 agreement of the parties from the mediators list maintained by  
14 the Alabama Supreme Court. The cost of mediation shall be  
15 borne by agreement of the parties or by the decision of the  
16 mediator.

17           Section 7. Notwithstanding any other provision in  
18 this act or state or federal law, the entity conducting the  
19 audit may not use the accounting practice of extrapolation in  
20 calculating recoupments or penalties for audits. An  
21 extrapolation audit means an audit of a sample of prescription  
22 drug benefit claims submitted by a pharmacy to the entity  
23 conducting the audit that is then used to estimate audit  
24 results for a larger batch or group of claims not reviewed by  
25 the auditor. Future fills or refills beyond the current claim

1 date may not be subject to recoupment due to an assumption of  
2 error under extrapolation procedure.

3 Section 8. This act does not apply to any audit,  
4 review, or investigation that involves alleged fraud, willful  
5 misrepresentation, or waste abuse.

6 Section 9. This act shall become effective on the  
7 first day of the third month following its passage and  
8 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB383

Senate 12-APR-12

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 02-MAY-12

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By: Senator Bussman