

1 SB390  
2 124198-2  
3 By Senators Beasley, Smitherman, Irons, Bussman and Ross  
4 RFD: Health  
5 First Read: 12-APR-11

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8 SYNOPSIS: Existing law does not specially provide  
9 minimum and uniform standards and criteria for the  
10 audit of pharmacy records.

11 This bill would establish minimum and  
12 uniform standards and criteria for the audit of  
13 pharmacy records by or on behalf of certain  
14 entities.

15 This bill would prescribe the procedures for  
16 conducting an audit.

17 This bill would provide for an appeal  
18 process.

19 This bill would provide that an entity  
20 conducting an audit may not use the accounting  
21 practice of extrapolation in calculating  
22 recoupments or penalties for audits.

23  
24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
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1           Relating to audits of pharmacy records; to establish  
2           minimum and uniform standards and criteria for the audit of  
3           pharmacy records by or on behalf of certain entities; to  
4           prescribe the procedures for conducting an audit; to provide  
5           for an appeal process; and to provide that an entity  
6           conducting an audit may not use the accounting practice of  
7           extrapolation in calculating recoupments or penalties for  
8           audits.

9           BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

14           (1) HEALTH BENEFIT PLAN. Any individual or group  
15           plan, employee welfare benefit plan, policy, or contract for  
16           health care services issued, delivered, issued for delivery,  
17           or renewed in this state by a health care insurer, health  
18           maintenance organization, accident and sickness insurer,  
19           fraternal benefit society, nonprofit hospital service  
20           corporation, nonprofit medical service corporation, health  
21           care service plan, or any other person, firm, corporation,  
22           joint venture, or other similar business entity that pays for  
23           insureds or beneficiaries in this state. The term includes,  
24           but is not limited to, entities created pursuant to Article 6,  
25           Chapter 4, Title 10, Code of Alabama 1975. A health benefit  
26           plan located or domiciled outside of the State of Alabama is  
27           deemed to be subject to this act if it receives, processes,

1 adjudicates, pays, or denies claims for health care services  
2 submitted by or on behalf of patients, insureds, or  
3 beneficiaries who reside in Alabama. Provided, however, the  
4 term shall not include accident-only, specified disease,  
5 hospital indemnity, Medicare supplement, long-term care,  
6 disability income, or other limited benefit health insurance  
7 policies.

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

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

26 (4) PHARMACY BENEFIT MANAGER. A business that  
27 administers the prescription drug or device portion of

1 pharmacy benefit management plans or health insurance plans on  
2 behalf of plan sponsors, insurance companies, unions, and  
3 health maintenance organizations. The term includes a person  
4 or entity acting for a pharmacy benefit manager in a  
5 contractual or employment relationship in the performance of  
6 pharmacy benefits management for a managed care company,  
7 nonprofit hospital or medical service organization, insurance  
8 company, or third-party payor.

9 (5) PHARMACIST SERVICES. Offering for sale,  
10 compounding, or dispensing of prescriptions, drugs, medical  
11 devices, medicines, chemicals, or poisons pursuant to a  
12 prescription.

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

16 Section 4. This act shall apply to any audit of the  
17 records of a pharmacy conducted by a managed care company,  
18 nonprofit hospital or medical service organization, health  
19 benefit plan, third-party payor, pharmacy benefit manager, a  
20 health program administered by a department of the state, or  
21 any entity that represents those companies, groups, or  
22 department.

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

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

1           (2) The entity conducting the on-site or desk audit  
2 shall give the pharmacy written notice at least two weeks  
3 before conducting the desk audit or the initial on-site audit  
4 for each audit cycle. The notice should include a documented  
5 checklist of all items being audited. This document shall  
6 serve as record for both the pharmacy and the entity  
7 conducting the audit. On the day of the on-site audit, the  
8 auditor shall initial each item that was successfully audited.  
9 The pharmacy shall produce any items not initialed by the  
10 auditor within 30 days of the on-site audit. The auditor shall  
11 provide the pharmacy with a receipt for records or copies of  
12 records that are taken from an on-site audit.

13           (3) The entity conducting the on-site audit may not  
14 interfere with the delivery of pharmacist services to a  
15 patient and shall utilize every effort to minimize  
16 inconvenience and disruption to pharmacy operations during the  
17 audit process.

18           (4) An audit that involves clinical or professional  
19 judgment shall be conducted by or in consultation with a  
20 pharmacist.

21           (5) A clerical or record-keeping error, such as a  
22 typographical error, scrivener's error, or computer error,  
23 regarding a required document or record shall not necessarily  
24 constitute fraud; however, those claims may be subject to  
25 recoupment. No such claim shall be subject to criminal  
26 penalties without proof of intent to commit fraud.

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.

4           (7) Where not superseded by state or federal law,  
5 audit information may not be shared. Auditors shall only have  
6 access to previous audit reports on a particular pharmacy  
7 conducted by that same entity.

8           (8) Any audit findings shall be disclosed to the  
9 health benefit plan.

10          (9) A pharmacy may use the records of a hospital,  
11 physician, or other authorized practitioner of the healing  
12 arts for drugs or medicinal supplies written or transmitted by  
13 any means of communication for purposes of validating the  
14 pharmacy record with respect to orders or refills of a legend  
15 or narcotic drug.

16          (10) All costs associated with the audit shall be  
17 the responsibility of the auditing entity with the exception  
18 of Alabama Medicaid.

19          (11) A finding of an overpayment or an underpayment  
20 may be a projection based on the number of patients served  
21 having a similar diagnosis or on the number of similar orders  
22 or refills for similar drugs, except that recoupment shall be  
23 based on the actual overpayment or underpayment of actual  
24 claims.

25          (12) A finding of an overpayment may not include the  
26 cost of the drugs that were dispensed in accordance with the  
27 prescriber's orders. A finding of an overpayment may not

1 include the dispensing fee amount unless a prescription was  
2 not dispensed.

3 (13) Each pharmacy shall be audited under the same  
4 standards and parameters as other similarly situated  
5 pharmacies audited by the entity.

6 (14) Where not superseded by state or federal law,  
7 the period covered by an audit may not exceed two years from  
8 the date the claim was submitted to or adjudicated by a  
9 managed care company, nonprofit hospital or medical service  
10 organization, health benefit plan, third-party payor, pharmacy  
11 benefit manager, a health program administered by a department  
12 of the state, or any entity that represents those companies,  
13 groups, or department, and in any event the audit period may  
14 not exceed the time a pharmacy is allowed to resubmit a claim  
15 pursuant to a contract.

16 (15) An audit may not be initiated or scheduled  
17 during the first five calendar days of any month due to the  
18 high volume of prescriptions filled in the pharmacy during  
19 that time unless otherwise consented to by the pharmacy.

20 (b) The entity shall provide the pharmacy with a  
21 written report of the audit and comply with the following  
22 requirements:

23 (1) The preliminary audit report shall be delivered  
24 to the pharmacy within 120 days after the conclusion of the  
25 audit, with a reasonable extension to be granted upon request.

26 (2) A pharmacy shall be allowed at least 30 days  
27 following receipt of the preliminary audit report in which to



1 produce documentation to address any discrepancy found during  
2 the audit, with a reasonable extension to be granted upon  
3 request.

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

8 (4) The audit report shall be signed by the auditor.

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

17 (6) Interest shall not accrue during the audit  
18 period.

19 (7) Each entity conducting an audit shall provide a  
20 copy of the final audit report, after completion of any review  
21 process, to the plan sponsor.

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

25 (b) If, following the appeal, the entity finds that  
26 an unfavorable audit report or any portion thereof is

1 unsubstantiated, the entity shall dismiss the audit report or  
2 that portion without the necessity of any further action.

3 (c) If, following the appeal, any of the issues  
4 raised in the appeal are not resolved to the satisfaction of  
5 either party, that party may ask for mediation of those  
6 unresolved issues. A certified mediator shall be chosen by  
7 agreement of the parties from the mediators list maintained by  
8 the Alabama Supreme Court.

9 Section 7. Notwithstanding any other provision in  
10 this act, the entity conducting the audit may not use the  
11 accounting practice of extrapolation in calculating  
12 recoupments or penalties for audits. An extrapolation audit  
13 means an audit of a sample of prescription drug benefit claims  
14 submitted by a pharmacy to the entity conducting the audit  
15 that is then used to estimate audit results for a larger batch  
16 or group of claims not reviewed by the auditor.

17 Section 8. This act does not apply to any audit,  
18 review, or investigation that involves alleged fraud, willful  
19 misrepresentation, or abuse.

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