

1 ENGROSSED HOUSE  
2 BILL NO. 2677

By: Marti, Caldwell (Trey),  
Fugate, West (Tammy),  
Dollens, Davis and Sneed of  
the House

4 and

5 McCortney of the Senate

6  
7  
8 An Act relating to professions and occupations;  
9 amending 59 O.S. 2011, Section 356.2, which relates  
10 to the Pharmacy Audit Integrity Act; modifying and  
11 expanding duties; prohibiting certain audits;  
12 providing for discrepancies; requiring acceptance of  
13 certain evidence; requiring provision of certain  
14 documents within specified time; providing audit  
15 requirements; modifying number of prescriptions to be  
16 audited; requiring invoices; modifying audit report  
17 time periods; eliminating certain withholdings;  
18 amending 59 O.S. 2011, Section 356.3, which relates  
19 to appeals process; clarifying when certain findings  
20 are to be referred to the district attorney;  
21 clarifying scope of application; amending Section 3,  
22 Chapter 263, O.S.L. 2014 (59 O.S. Supp. 2020, Section  
23 359), which relates to information to be provided by  
24 pharmacy benefits manager; removing exceptions;  
amending Section 4, Chapter 263, O.S.L. 2014, as  
amended by Section 8, Chapter 285, O.S.L. 2016 (59  
O.S. Supp. 2020, Section 360), which relates to  
contractual duties to providers; modifying  
reimbursement procedure; prohibiting placement of  
drugs on certain list, with exceptions; modifying  
accreditation or licensing requirement; allowing  
certain entities to decline to provide services;  
requiring provision of certain information; and  
declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

23 3. ~~For an on-site audit, not~~ Not interfere with the delivery of  
24 pharmacist services to a patient and shall utilize every reasonable

1 effort to minimize inconvenience and disruption to pharmacy  
2 operations during the audit process;

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

5 5. Not consider as fraud any clerical or record-keeping error,  
6 such as a typographical error, scrivener's error, or computer error  
7 ~~regarding a required document or record; however, including, but not~~

8 limited to, a miscalculated day supply, incorrectly billed  
9 prescription written date or prescription origin code, and such  
10 errors ~~may~~ shall not be subject to recoupment. The pharmacy shall

11 have the right to submit amended claims electronically to correct  
12 clerical or record-keeping errors in lieu of recoupment, ~~provided~~  
13 ~~that the prescription was dispensed according to prescription~~  
14 ~~documentation requirements set forth by the Oklahoma Pharmacy Act.~~

15 To the extent that an audit results in the identification of any  
16 clerical or record-keeping errors such as typographical errors,  
17 scrivener's errors or computer errors in a required document or  
18 record, the pharmacy shall not be subject to recoupment of funds by  
19 the pharmacy benefits manager unless the pharmacy benefits manager  
20 can provide proof of intent to commit fraud ~~or such error results in~~  
21 ~~actual financial harm to the pharmacy benefits manager, a health~~  
22 ~~insurance plan managed by the pharmacy benefits manager or a~~  
23 ~~consumer.~~ A person shall not be subject to criminal penalties for

24

1 errors provided for in this paragraph without proof of intent to  
2 commit fraud;

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

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

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

20 ~~9.~~ 8. Audit each pharmacy under ~~the same~~ identical standards,  
21 regularity and parameters as other similarly situated pharmacies  
22 ~~audited by the entity~~ and all pharmacies owned or managed by the  
23 pharmacy benefits manager conducting or having conducted the audit;  
24

1       ~~10.~~ 9. Not exceed ~~two (2) years~~ one (1) year from the date the  
2 claim was submitted to or adjudicated by a managed care company,  
3 nonprofit hospital or medical service organization, insurance  
4 company, third-party payor, pharmacy benefits manager, a health  
5 program administered by a department of this state, or any entity  
6 that represents the companies, groups, or departments for the period  
7 covered by an audit;

8       ~~11.~~ 10. Not schedule or initiate an audit during the first  
9 seven (7) calendar days of any month ~~due to the high volume of~~  
10 ~~prescriptions filled in the pharmacy during that time~~ unless  
11 otherwise consented to by the pharmacy; ~~and~~

12       ~~12.~~ 11. Disclose to any plan sponsor whose claims were included  
13 in the audit any money recouped in the audit; and

14       12. Not require pharmacists to break open packaging labeled  
15 "for single-patient-use only". Packaging labeled "for single-  
16 patient-use only" shall be deemed to be the smallest package size  
17 available.

18       B. 1. Any entity that conducts wholesale purchase review  
19 during an audit of a pharmacist or pharmacy shall not require the  
20 pharmacist or pharmacy to provide a full dispensing report.

21 Wholesaler invoice reviews shall be limited to verification of  
22 purchase inventory specific to the pharmacy claims paid by the  
23 health benefits plan or pharmacy benefits manager conducting the  
24 audit.

1        2. Any entity conducting an audit shall not identify or label a  
2 prescription claim as an audit discrepancy when:

3            a. the National Drug Code for the dispensed drug is in a  
4            quantity that is a subunit or multiple of the drug  
5            purchased by the pharmacist or pharmacy as supported  
6            by a wholesale invoice,

7            b. the pharmacist or pharmacy dispensed the correct  
8            quantity of the drug according to the prescription,  
9            and

10           c. the drug dispensed by the pharmacist or pharmacy  
11           shares all but the last two digits of the National  
12           Drug Code of the drug reflected on the supplier  
13           invoice.

14        3. An entity conducting an audit shall accept as evidence,  
15 subject to validation, to support the validity of a pharmacy claim  
16 related to a dispensed drug:

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

19           b. invoices and any supporting documents from any  
20           supplier as authorized by federal or state law to  
21           transfer ownership of the drug acquired by the  
22           pharmacist or pharmacy.

23        4. An entity conducting an audit shall provide, no later than  
24 five (5) business days after the date of a request by the pharmacist

1 or pharmacy, all supporting documents the pharmacist's or pharmacy's  
2 purchase suppliers provided to the health benefits plan issuer or  
3 pharmacy benefits manager.

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

10 ~~C.~~ D. The entity conducting the audit shall not audit more than  
11 ~~seventy five (75)~~ fifty prescriptions, with specific date of  
12 service, per initial audit calendar year. The annual limit to the  
13 number of prescription claims audited shall be inclusive of all  
14 audits, including any prescription-related documentation requests  
15 from the health insurer, pharmacy benefits manager or any third-  
16 party company conducting audits on behalf of any health insurer or  
17 pharmacy benefits manager during a calendar year.

18 ~~D.~~ E. If paper copies of records are requested by the entity  
19 conducting the audit, the entity shall pay twenty-five cents (\$0.25)  
20 per page to cover the costs incurred by the pharmacy. The entity  
21 conducting the audit shall provide the pharmacy with accurate  
22 instructions, including any required form for obtaining  
23 reimbursement for the copied records.

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

3 1. Deliver a preliminary audit findings report to the pharmacy  
4 and the pharmacy's contracting agent within ~~ninety (90)~~ forty-five  
5 (45) calendar days ~~after conclusion~~ of conducting the audit;

6 2. Allow the pharmacy at least ~~sixty (60)~~ ninety (90) calendar  
7 days following receipt of the preliminary audit findings report in  
8 which to produce documentation to address any discrepancy found  
9 during the audit; provided, however, a pharmacy may request an  
10 extension, not to exceed an additional ~~sixty (60)~~ forty-five (45)  
11 calendar days;

12 3. Deliver a final audit findings report to the pharmacy and  
13 the pharmacy's contracting agent signed by the auditor within ~~one~~  
14 ~~hundred twenty (120)~~ ten (10) calendar days after receipt of ~~the~~  
15 ~~preliminary audit report or final appeal~~ additional documentation  
16 provided by the pharmacy, as provided for in Section 356.3 of this  
17 title, ~~whichever is later~~;

18 4. ~~Recoup~~ Allow the pharmacy to reverse and resubmit claims  
19 electronically within thirty (30) days of receipt of the final audit  
20 report in lieu of the auditing entity recouping discrepant claim  
21 amounts from the pharmacy;

22 5. May not recoup any disputed funds until after final ~~internal~~  
23 disposition of the audit findings, including the appeals process as  
24 provided for in Section 356.3 of this title. ~~Unless otherwise~~

1 ~~agreed by the parties, future payments to the pharmacy may be~~  
2 ~~withheld pending finalization of the audit should the identified~~  
3 ~~discrepancy exceed Twenty-five Thousand Dollars (\$25,000.00); and~~

4 ~~5.~~ 6. Not accrue interest during the audit and appeal period.

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

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

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

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

22 ~~H.~~ I. Unless superseded by state or federal law, auditors shall  
23 only have access to previous audit reports on a particular pharmacy  
24 conducted by the auditing entity for the same pharmacy benefits

1 manager, health plan or insurer. An auditing vendor contracting  
2 with multiple pharmacy benefits managers or health insurance plans  
3 shall not use audit reports or other information gained from an  
4 audit on a ~~particular~~ pharmacy to conduct another audit for a  
5 different pharmacy benefits manager or health insurance plan.

6 SECTION 2. AMENDATORY 59 O.S. 2011, Section 356.3, is  
7 amended to read as follows:

8 Section 356.3 A. Each entity conducting an audit shall  
9 establish a written appeals process under which a pharmacy may  
10 appeal an unfavorable preliminary audit report and/or final audit  
11 report to the entity.

12 B. Following an appeal, if the entity finds that an unfavorable  
13 audit report or any portion thereof is unsubstantiated, the entity  
14 shall dismiss the audit report or the unsubstantiated portion of the  
15 audit report without any further action.

16 C. Any final audit report, following the final audit appeal  
17 period, with a finding of fraud or willful misrepresentation shall  
18 be referred to the district attorney having proper jurisdiction or  
19 the Attorney General for prosecution upon completion of the appeals  
20 process.

21 D. This act does not apply to any audit, review or  
22 investigation that is initiated based on or that involves ~~suspected~~  
23 ~~or alleged~~ fraud, willful ~~misrepresentation~~ misrepresentation or  
24 abuse.

1 SECTION 3. AMENDATORY Section 3, Chapter 263, O.S.L.  
2 2014 (59 O.S. Supp. 2020, Section 359), is amended to read as  
3 follows:

4 Section 359. ~~Unless otherwise provided by contract, a~~ A  
5 pharmacy benefits manager shall provide, upon request by the covered  
6 entity, information regarding the difference in the amount paid to  
7 providers for prescription services rendered to covered individuals  
8 and the amount billed by the pharmacy benefits manager to the  
9 covered entity or plan sponsor to pay for prescription services  
10 rendered to covered individuals.

11 SECTION 4. AMENDATORY Section 4, Chapter 263, O.S.L.  
12 2014, as amended by Section 8, Chapter 285, O.S.L. 2016 (59 O.S.  
13 Supp. 2020, Section 360), is amended to read as follows:

14 Section 360. A. The pharmacy benefits manager shall, with  
15 respect to contracts between a pharmacy benefits manager and a  
16 provider, including a pharmacy service administrative organization:

17 1. Include in such contracts the specific sources utilized to  
18 determine the maximum allowable cost (MAC) pricing of the pharmacy,  
19 update MAC pricing at least every seven (7) calendar days, and  
20 establish a process for providers to readily access the MAC list  
21 specific to that provider;

22 2. In order to place a drug on the MAC list, ensure that the  
23 drug is listed as "A" or "B" rated in the most recent version of the  
24 FDA's Approved Drug Products with Therapeutic Equivalence

1 Evaluations, also known as the Orange Book, ~~or has an "NR" or "NA"~~  
2 ~~rating or a similar rating by a nationally recognized reference,~~ and  
3 the drug is generally available for purchase by pharmacies in the  
4 state from national or regional wholesalers and is not obsolete;

5 3. Ensure dispensing fees are not included in the calculation  
6 of MAC price reimbursement to pharmacy providers;

7 4. Provide a reasonable administration appeals procedure to  
8 allow a provider ~~or,~~ a provider's representative and a pharmacy  
9 service administrative organization to contest reimbursement amounts  
10 within ~~ten (10)~~ fourteen (14) business days of the final adjusted  
11 payment date. The pharmacy benefits manager shall not prevent the  
12 pharmacy or the pharmacy service administrative organization from  
13 filing reimbursement appeals in an electronic batch format. The  
14 pharmacy benefits manager must respond to a provider ~~or,~~ a  
15 provider's representative and a pharmacy service administrative  
16 organization who has have contested a reimbursement amount through  
17 this procedure within ten (10) business days. The pharmacy benefits  
18 manager must respond in an electronic batch format to reimbursement  
19 appeals filed in an electronic batch format. The pharmacy benefits  
20 manager shall not require a pharmacy or pharmacy services  
21 administrative organization to log into a system to upload  
22 individual claim appeals or to download individual appeal responses.  
23 If a price update is warranted, the pharmacy benefits manager shall  
24 make the change in the reimbursement amount, permit the ~~challenging~~

1 dispensing pharmacy to reverse and rebill the claim in question, and  
2 make the reimbursement amount change retroactive and effective for  
3 each similarly all contracted Oklahoma provider providers; and

4 5. If ~~the~~ a below-cost reimbursement appeal is denied, the PBM  
5 shall provide the reason for the denial, including the National Drug  
6 Code number from the specific national or regional wholesalers where  
7 the drug is ~~generally~~ available for purchase by ~~pharmacies in the~~  
8 ~~state at or~~ the dispensing pharmacy at a price below the PBM's  
9 reimbursement price. If the pharmacy benefits manager cannot  
10 provide a specific national or regional wholesaler where the drug  
11 can be purchased by the dispensing pharmacy at a price below the  
12 pharmacy benefits manager's reimbursement price, the pharmacy  
13 benefits manager shall immediately adjust the reimbursement amount,  
14 permit the dispensing pharmacy to reverse and rebill the claim in  
15 question, and make the reimbursement amount adjustment retroactive  
16 and effective for all contracted providers.

17 B. The pharmacy benefits manager ~~may~~ shall not place a drug on  
18 a MAC list, unless there are at least two therapeutically  
19 equivalent, multiple-source drugs, ~~or at least one generic drug~~  
20 ~~available from only one manufacturer,~~ generally available for  
21 purchase by ~~network~~ dispensing retail pharmacies from national or  
22 regional wholesalers.

23 C. The pharmacy benefits manager shall not require  
24 accreditation or licensing of providers, or any entity licensed or

1 regulated by the State Board of Pharmacy, other than by the State  
2 Board of Pharmacy ~~or other state~~ or federal government entity as a  
3 condition for participation as a network provider.

4 D. A pharmacy or pharmacist may decline to provide the  
5 pharmacist clinical or dispensing services to a patient or pharmacy  
6 benefits manager if the pharmacy or pharmacist is to be paid less  
7 than the pharmacy's cost for providing the pharmacist clinical or  
8 dispensing services.

9 E. The pharmacy benefits manager shall provide a dedicated  
10 telephone number, email address and names of the personnel with  
11 decision-making authority regarding MAC appeals and pricing.

12 SECTION 5. It being immediately necessary for the preservation  
13 of the public peace, health or safety, an emergency is hereby  
14 declared to exist, by reason whereof this act shall take effect and  
15 be in full force from and after its passage and approval.

16 Passed the House of Representatives the 10th day of February,  
17 2021.

18  
19 \_\_\_\_\_  
20 Presiding Officer of the House  
of Representatives

21 Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2021.

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23 \_\_\_\_\_  
24 Presiding Officer of the Senate