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2 88th General Assembly
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4

As Engrossed: H3/9/11
A Bill

SENATE BILL 722

5 By: Senator J. Key
6

7 **For An Act To Be Entitled**

8 AN ACT TO CLARIFY THE PROCEDURES FOR RECOUPMENT OF
9 COSTS UNDER THE ARKANSAS PHARMACY AUDIT BILL OF
10 RIGHTS; AND FOR OTHER PURPOSES.
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13 **Subtitle**

14 AN ACT TO CLARIFY THE PROCEDURES FOR
15 RECOUPMENT OF COSTS UNDER THE ARKANSAS
16 PHARMACY AUDIT BILL OF RIGHTS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 17-92-1201(b), concerning the Arkansas
22 Pharmacy Audit Bill of Rights, is amended to read as follows:

23 (b) Notwithstanding any other law, when an audit of the records of a
24 pharmacy is conducted by a managed care company, an insurance company, a
25 third-party payor, or any entity that represents responsible parties such as
26 companies or groups, the audit shall be conducted in accordance with the
27 following bill of rights:

28 (1) The entity conducting the initial on-site audit shall give
29 the pharmacy notice at least one (1) week before conducting the initial on-
30 site audit for each audit cycle;

31 (2) Any audit that involves clinical or professional judgment
32 shall be conducted by or in consultation with a pharmacist;

33 (3)(A)(i) Any clerical or recordkeeping error, such as a
34 typographical error, scrivener's error, or computer error, regarding a
35 required document or record shall not in and of itself constitute fraud.

36 (ii) However, a claim arising under subdivision



1 (b)(3)(A)(i) of this section may be subject to recoupment.

2 (B) ~~No~~ A claim arising under subdivision (b)(3)(A)(i) of
3 this section ~~shall be~~ is not subject to criminal penalties without proof of
4 intent to commit fraud;

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

10 (5)(A) A finding of an overpayment or underpayment may be a
11 projection based on the number of patients served having a similar diagnosis
12 or on the number of similar orders or refills for similar drugs.

13 (B) However, recoupment of claims under subdivision
14 (b)(5)(A) of this section shall be based on the actual overpayment unless the
15 projection for overpayment or underpayment is part of a settlement by the
16 pharmacy;

17 (6)(A) Where an audit is for a specifically identified problem
18 that has been disclosed to the pharmacy, the audit shall be limited to claims
19 that are identified by prescription number.

20 (B) For an audit other than described in subdivision
21 (b)(6)(A) of this section, an audit shall be limited to twenty-five (25)
22 prescriptions that have been randomly selected.

23 (C) If an audit reveals the necessity for a review of
24 additional claims, the audit shall be conducted on site.

25 (D) Except for audits initiated under subdivision
26 (b)(6)(A) of this section, an entity shall not initiate an audit of a
27 pharmacy more than two (2) times in a calendar year;

28 (7)(A) A recoupment shall not be based on:

29 (i) Documentation requirements in addition to or
30 exceeding requirements for creating or maintaining documentation prescribed
31 by the Arkansas State Board of Pharmacy; or

32 (ii)(a) A requirement that a pharmacy or pharmacist
33 perform a professional duty in addition to or exceeding professional duties
34 prescribed by the Arkansas State Board of Pharmacy.

35 (b) This subdivision (b)(7) applies only to
36 audits of claims submitted for payment on or after January 1, 2012.

1 (B) Subdivisions (b)(7)(A)(i) and (ii) do not apply in
2 cases of Food and Drug Administration regulation or drug manufacturer safety
3 programs;

4 (8) Recoupment shall only occur following the correction of a
5 claim and shall be limited to amounts paid in excess of amounts payable under
6 the corrected claim;

7 (9) Except for Medicare claims, approval of drug, prescriber, or
8 patient eligibility upon adjudication of a claim shall not be reversed unless
9 the pharmacy or pharmacist obtained the adjudication by fraud or
10 misrepresentation of claim elements;

11 ~~(6)(10)~~ Each pharmacy shall be audited under the same standards
12 and parameters as other similarly situated pharmacies audited by the entity;

13 ~~(7)(11)~~ A pharmacy shall be allowed at least thirty (30) days
14 following receipt of the preliminary audit report in which to produce
15 documentation to address any discrepancy found during an audit;

16 ~~(8)(12)~~ The period covered by an audit shall not exceed twenty-
17 four (24) months from the date the claim was submitted to or adjudicated by a
18 managed care company, an insurance company, a third-party payor, or any
19 entity that represents such companies or groups;

20 ~~(9)(13)~~ Unless otherwise consented to by the pharmacy, an audit
21 shall not be initiated or scheduled during the first seven (7) calendar days
22 of any month due to the high volume of prescriptions filled during that time;

23 ~~(10)(A)(14)(A)~~ The preliminary audit report shall be delivered
24 to the pharmacy within one hundred twenty (120) days after conclusion of the
25 audit.

26 (B) A final audit report shall be delivered to the
27 pharmacy within six (6) months after receipt of the preliminary audit report
28 or the final appeal as provided for in subsection (c) of this section,
29 whichever is later; and

30 ~~(11)(A)(15)~~ ~~The audit criteria set forth in this subsection~~
31 ~~shall apply only to audits of claims submitted for payment after January 1,~~
32 ~~2008.~~

33 ~~(B)~~ Notwithstanding any other provision in this
34 subsection, the agency conducting the audit shall not use the accounting
35 practice of extrapolation in calculating recoupments or penalties for audits.

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1 SECTION 2. Arkansas Code § 17-92-1201, concerning the Arkansas
2 Pharmacy Audit Bill of Rights, is amended to add an additional subsection and
3 redesignate the subsequent subsection to read as follows:

4 (f)(1) The full amount of any recoupment on an audit shall be refunded
5 to the responsible party.

6 (2) Except as provided in subsection (f)(3) of this section, a
7 charge or assessment for an audit shall not be based, directly or indirectly,
8 on amounts recouped.

9 (3) Subsection (f)(2) does not prevent the entity conducting the
10 audit from charging or assessing the responsible party, directly or
11 indirectly, based on amounts recouped if both the following conditions are
12 met:

13 (A) The responsible party and the entity have a contract
14 that explicitly states the percentage charge or assessment to the responsible
15 party; and

16 (B) A commission or other payment to an agent or employee
17 of the entity conducting the audit is not based, directly or indirectly on
18 amounts recouped.

19 ~~(f)~~(g) This section does not apply to any audit, review, or
20 investigation that involves alleged fraud, willful misrepresentation, or
21 abuse, including without limitation:

- 22 (1) Medicaid fraud as defined in § 5-55-111;
- 23 (2) Abuse or fraud as defined in § 20-77-1702; or
- 24 (3) Insurance fraud.

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26 /s/J. Key

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29 **APPROVED: 03/21/2011**