

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 843 of the Regular Session

As Engrossed: H3/16/07 S3/23/07

A Bill

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

HOUSE BILL 2626

4
5 By: Representative Sample
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8 **For An Act To Be Entitled**

9 AN ACT TO ESTABLISH AN ARKANSAS PHARMACY AUDIT
10 BILL OF RIGHTS; AND FOR OTHER PURPOSES.
11

12 **Subtitle**

13 THE ARKANSAS PHARMACY AUDIT BILL OF
14 RIGHTS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code Title 17, Chapter 92 is amended to add an
20 additional subchapter to read as follows:

21 17-92-1201. Arkansas Pharmacy Audit Bill of Rights.

22 (a) This subchapter shall be known and may be cited as the "Arkansas
23 Pharmacy Audit Bill of Rights".

24 (b) Notwithstanding any other law, when an audit of the records of a
25 pharmacy is conducted by a managed care company, an insurance company, a
26 third-party payor, or any entity that represents such companies or groups,
27 the audit shall be conducted in accordance with the 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 record-keeping 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.



1 (ii) However, a claim arising under subdivision
2 (b)(3)(A)(i) of this section may be subject to recoupment.

3 (B) No claim arising under subdivision (b)(3)(A)(i) of
4 this section shall be subject to criminal penalties without proof of intent
5 to commit fraud;

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

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

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

18 (6) Each pharmacy shall be audited under the same standards and
19 parameters as other similarly situated pharmacies audited by the entity;

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

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

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

30 (10)(A) The preliminary audit report shall be delivered to the
31 pharmacy within one hundred twenty (120) days after conclusion of the audit.

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

36 (11)(A) The audit criteria set forth in this subsection shall

1 apply only to audits of claims submitted for payment after January 1, 2008.

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

5 (c) Recoupments of any disputed funds shall only occur after final
6 internal disposition of the audit, including the appeals process as set forth
7 in subsection (d) of this section.

8 (d)(1) Each entity conducting an audit shall establish an appeals
9 process under which a pharmacy may appeal an unfavorable preliminary audit
10 report to the entity.

11 (2) If, following the appeal, the entity finds that an
12 unfavorable audit report or any portion of the unfavorable audit report is
13 unsubstantiated, the entity shall dismiss the audit report or the
14 unsubstantiated portion of the audit report without any further proceedings.

15 (e) Each entity conducting an audit shall provide a copy of the final
16 audit report to the plan sponsor after completion of any review process.

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

20 (1) Medicaid fraud as defined in § 5-55-111;

21 (2) Abuse or fraud as defined in § 20-77-1702; or

22 (3) Insurance fraud.

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24 /s/ Sample

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26 APPROVED: 4/3/2007