

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.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

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

# A Bill

HOUSE BILL 2626

5 By: Representative Sample  
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## For An Act To Be Entitled

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

### Subtitle

12 THE ARKANSAS PHARMACY AUDIT BILL OF  
13 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.

36 (ii) However, a claim arising under subdivision



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

2 (B) No claim arising under subdivision (b)(3)(A)(i) of  
3 this section shall be subject to criminal penalties without proof of intent  
4 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) Each pharmacy shall be audited under the same standards and  
18 parameters as other similarly situated pharmacies audited by the entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (3) Insurance fraud.

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23 /s/ Sample  
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