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CS FOR HOUSE BILL NO. 259(L&C)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-SEVENTH LEGISLATURE - SECOND SESSION****BY THE HOUSE LABOR AND COMMERCE COMMITTEE****Offered:****Referred:****Sponsor(s): REPRESENTATIVES MUÑOZ AND PEGGY WILSON, Olson****A BILL****FOR AN ACT ENTITLED**

1 **"An Act establishing procedures and guidelines for auditing pharmacy records; and**
2 **providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **INTENT.** This Act is intended to establish standards for an audit of pharmacy records
7 carried out by an insurer, a managed care company, a third-party payor, a pharmacy benefits
8 manager, a health plan administered by the state, or any entity that represents such companies.

9 *** Sec. 2.** AS 08.80 is amended by adding a new section to read:

10 **Sec. 08.80.477. Pharmacy audits.** (a) When an audit of the records of a
11 pharmacy licensed in this state is conducted by an insurer, managed care company,
12 hospital or medical service corporation, third-party payor, or pharmacy benefits
13 manager,

14 (1) for each audit cycle, the auditor shall provide the pharmacy or

1 pharmacist with notice of the audit at least two weeks before conducting the initial on-
2 site audit;

3 (2) unless the pharmacy and the auditor agree otherwise, the audit may
4 not be scheduled to occur during the first seven business days of a month because of
5 the high volume of prescriptions that are filled during that time;

6 (3) an insurer, managed care company, hospital or medical service
7 corporation, third-party payor, or pharmacy benefits manager may not conduct an
8 audit within 90 days after an audit in which no errors were found; in this paragraph,
9 "error" does not mean a clerical error, record keeping error, or typographical error
10 unless the auditor finds proof of intent to commit fraud.

11 (4) the audit of a claim shall occur within two years after the date the
12 claim was submitted;

13 (5) if the audit involves clinical or professional judgment, the audit
14 must be conducted by or in consultation with a pharmacist licensed in this or another
15 state;

16 (6) each pharmacy shall be audited using the same standards and
17 parameters as other similarly situated pharmacies;

18 (7) an auditor may not use the accounting practice of extrapolation to
19 establish an overpayment or underpayment or for calculating recoupment or penalties;

20 (8) a finding of overpayment or underpayment by the auditor must be
21 based on an actual overpayment or underpayment and may not be based on a
22 projection based on the number of patients served who have a similar diagnosis or on
23 the number of similar orders or refills for similar drugs;

24 (9) calculations of overpayment by an auditor may not include
25 dispensing fees unless a prescription was not dispensed, a physician denied
26 authorization to dispense the prescription, or the dispensing violated a term of a
27 contract;

28 (10) an auditor may not assess a charge-back, recoupment, or other
29 penalty against a pharmacy solely because a prescription is mailed or delivered at the
30 request of a patient as part of a routine business practice of the pharmacy;

31 (11) to the extent that an audit finds clerical or record keeping errors in

1 a required document or record, the pharmacy may not be subject to recoupment unless
2 there is proof of intent to commit fraud or the clerical or record keeping error results in
3 actual financial harm to an insurer, managed care company, hospital or medical
4 services corporation, third-party payor, pharmacy benefits manager, or a customer;

5 (12) the preliminary audit report must be delivered to the pharmacy
6 within 120 days after the completion of the audit;

7 (13) interest may not accrue from the date of completion of the audit to
8 the delivery date of the preliminary audit report, unless an auditor finds proof of intent
9 to commit fraud;

10 (14) a pharmacy shall be allowed at least 30 days following receipt of
11 a preliminary audit report to produce documentation to address a discrepancy found
12 during the audit; a pharmacy may use any record, including the records of a hospital,
13 physician, or other health care provider, or other written or electronic record to
14 validate a pharmacy record;

15 (15) the insurer, managed care company, hospital or medical service
16 corporation, third-party payor, or pharmacy benefits manager shall establish a written
17 appeal process by which a pharmacy may appeal an unfavorable preliminary or final
18 audit report;

19 (16) the final audit report must be delivered to the pharmacy within 90
20 days after receipt of the preliminary audit report or final appeal;

21 (17) the auditor may not receive compensation based on the percentage
22 of the amount recovered by the auditor;

23 (18) the auditor shall provide a copy of the final report to a health
24 benefit plan sponsor affected by the audit.

25 (19) patient information accessed in the course of an audit is
26 confidential and may not be used for marketing purposes;

27 (b) This section does not apply to

28 (1) a criminal investigation; or

29 (2) an investigation or audit by a governmental agency, including state
30 Medicaid programs.

31 (c) In this section, "health benefit plan" has the meaning given in

1 AS 21.54.500.

2 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. This Act applies to pharmacy audits conducted after the effective
5 date of this Act.

6 * **Sec. 4.** This Act takes effect January 1, 2013.