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CS FOR SENATE BILL NO. 217()**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-SEVENTH LEGISLATURE - SECOND SESSION****BY****Offered:****Referred:****Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE****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 uncoded 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.