

CS FOR SENATE BILL NO. 217(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/14/12

Referred: Finance

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 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 those
9 companies.

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

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

1 (1) for each audit cycle, the auditor shall provide the pharmacy or
2 pharmacist with notice of the audit at least two weeks before conducting the initial on-
3 site audit;

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

7 (3) an auditor may not audit more than 75 prescriptions during a single
8 audit;

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

11 (5) if the audit involves clinical or professional judgment, the audit
12 must be conducted by or in consultation with a pharmacist licensed in the state;

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

15 (7) an auditor may not require more stringent record keeping by a
16 pharmacy than is required by state or federal law;

17 (8) a clerical error, record-keeping error, typographical error, or
18 scrivener's error may not be the basis for a finding of fraud;

19 (9) an auditor conducting an audit may only have access to previous
20 audit reports prepared by the auditor for the particular pharmacy being audited;

21 (10) an auditor may provide information only to the person requesting
22 the audit and the pharmacy being audited;

23 (11) an auditor may not use the accounting practice of extrapolation to
24 establish an overpayment or underpayment or for calculating recoupment or penalties;

25 (12) a finding of overpayment or underpayment by the auditor must be
26 based on an actual overpayment or underpayment and may not be based on a
27 projection based on the number of patients served who have a similar diagnosis or on
28 the number of similar orders or refills for similar drugs;

29 (13) an auditor may not assess a charge-back, recoupment, or other
30 penalty against a pharmacy based on a prescription that is mailed or delivered by
31 request of a patient as part of a routine business practice;

1 (14) calculations of overpayments may not include dispensing fees;

2 (15) the preliminary audit report must be delivered to the pharmacy
3 within 60 days after the completion of the audit;

4 (16) a pharmacy shall be allowed at least 30 days following receipt of
5 a preliminary audit report to produce documentation to address a discrepancy found
6 during the audit; a pharmacy may use any record, including the records of a hospital,
7 physician, or other health care provider, documented telephone calls from the
8 prescriber or prescriber's agent, or other written or electronic record to validate a
9 pharmacy record;

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

14 (18) the final audit report must be delivered to the pharmacy within 90
15 days after receipt of the preliminary audit report or final appeal;

16 (19) a charge-back, recoupment, or other penalty may not be assessed
17 until the appeal process has been exhausted and the final report issued and may not
18 include charges for dispensing fees;

19 (20) the auditor may not receive compensation based on the percentage
20 of the amount recovered by the auditor;

21 (21) interest may not accrue during the audit period;

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

24 (b) This section does not apply to

25 (1) a criminal investigation; or

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

28 (c) In this section, "health benefit plan" has the meaning given in
29 AS 21.54.500.

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

1 APPLICABILITY. This Act applies to pharmacy audits conducted after the effective
2 date of this Act.

3 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).