

CS FOR SENATE BILL NO. 217(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/14/12

Referred: Today's Calendar

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

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

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

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

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

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

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

30 (11) to the extent that an audit finds clerical or record keeping errors in
31 a required document or record, the pharmacy may not be subject to recoupment unless

1 the clerical or record keeping error results in actual financial harm to an insurer,
 2 managed care company, hospital or medical services corporation, third-party payor,
 3 pharmacy benefits manager, or a customer;

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

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

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

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

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

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

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

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

26 (b) This section does not apply to

27 (1) a criminal investigation; or

28 (2) state Medicaid programs.

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

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

1 read:

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

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