

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 8
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY SENATORS EGAN, McGuire, French, Micciche, Gardner

Introduced: 2/22/13

Referred: Labor and Commerce, State Affairs

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

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

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

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

1 (3) an insurer, managed care company, hospital or medical service
2 corporation, third-party payor, or pharmacy benefits manager may not conduct an
3 audit within 90 days after an audit in which no errors were found; in this paragraph,
4 "error" does not mean a clerical error, record-keeping error, or typographical error,
5 unless the auditor

6 (A) reasonably determines that the error was intentional; or

7 (B) identifies a pattern of errors;

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

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

13 (6) the auditor shall, on behalf of the same audit client, audit each
14 pharmacy using the same standards and parameters as other similarly situated
15 pharmacies;

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

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

22 (9) calculation by the auditor of an overpayment may not include
23 dispensing fees for a prescription that was dispensed to the patient if any portion of the
24 claim and associated dispensing fee is payable by an insurer, managed care company,
25 hospital or medical service corporation, third-party payor, or pharmacy benefits
26 manager under the terms of the contract, except when the claim is fraudulent, the
27 prescription was dispensed as the result of a dispensing error by the pharmacy, or the
28 identified overpayment is based solely on an extra dispensing fee;

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

1 (11) to the extent that an audit finds clerical or record-keeping errors in
2 a required document or record, the pharmacy may not be subject to recoupment unless
3 the clerical or record-keeping error results in actual financial harm to an insurer,
4 managed care company, hospital or medical service corporation, third-party payor,
5 pharmacy benefits manager, or customer;

6 (12) the auditor shall deliver the preliminary audit report to the
7 pharmacy within 120 days after the completion of the audit;

8 (13) interest may not accrue to either party during the audit period,
9 beginning from the notice of audit and ending at the conclusion of the appeal process,
10 if any;

11 (14) a pharmacy shall be allowed at least 30 days following receipt of
12 a preliminary audit report to produce documentation to address a discrepancy found
13 during the audit; a pharmacy may use any authentic and verifiable statement or record,
14 including a medication administration record of a nursing home, assisted living
15 facility, hospital, physician or other health care provider, or other written or electronic
16 record, to validate a pharmacy record;

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

20 (16) the auditor shall deliver the final audit report to the pharmacy
21 within 90 days after receipt of the pharmacy's response to the preliminary report;

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

24 (18) the auditor shall provide a copy of the final report to a health
25 benefit plan sponsor affected by the audit if requested by the plan sponsor;

26 (19) patient information accessed in the course of an audit shall be kept
27 confidential and may not be used for marketing purposes.

28 (b) This section does not apply to

- 29 (1) a criminal investigation; or
30 (2) state Medicaid programs.

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

1 AS 21.54.500.

2 * **Sec. 2.** 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 on or after the
5 effective date of this Act.

6 * **Sec. 3.** This Act takes effect January 1, 2014.