

1 SB348  
2 192262-1  
3 By Senators Beasley, McClendon, Allen, Dial, Holley, Stutts,  
4 Melson, Singleton, Dunn, Coleman-Madison and Smitherman  
5 RFD: Health and Human Services  
6 First Read: 27-FEB-18

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8 SYNOPSIS: Existing law provides auditing procedures  
9 for pharmacy records by or on behalf of certain  
10 entities.

11 This bill would further provide auditing  
12 procedures for pharmacy records and would limit  
13 recoupment for certain errors by a pharmacy.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT

18  
19 To amend Sections 34-23-181, 34-23-184, 34-23-185,  
20 and 34-23-186 of the Code of Alabama 1975, relating to  
21 auditing procedures for pharmacy records; to further provide  
22 for auditing procedures; and to limit recoupment for certain  
23 errors by a pharmacy.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 34-23-181, 34-23-184, 34-23-185,  
26 and 34-23-186 of the Code of Alabama 1975, are amended to read  
27 as follows:

1           "§34-23-181.

2           "The following words shall have the following  
3 meanings as used in this article:

4           "(1) HEALTH BENEFIT PLAN. Any individual or group  
5 plan, employee welfare benefit plan, policy, or contract for  
6 health care services issued, delivered, issued for delivery,  
7 or renewed in this state by a health care insurer, health  
8 maintenance organization, accident and sickness insurer,  
9 fraternal benefit society, nonprofit hospital service  
10 corporation, nonprofit medical service corporation, health  
11 care service plan, or any other person, firm, corporation,  
12 joint venture, or other similar business entity that pays for  
13 insureds or beneficiaries in this state. The term includes,  
14 but is not limited to, entities created pursuant to Article 6  
15 of Chapter 4 of Title 10. A health benefit plan located or  
16 domiciled outside of the State of Alabama is deemed to be  
17 subject to this article if it receives, processes,  
18 adjudicates, pays, or denies claims for health care services  
19 submitted by or on behalf of patients, insureds, or  
20 beneficiaries who reside in Alabama.

21           "(2) PHARMACY. A place licensed by the Alabama State  
22 Board of Pharmacy in which prescriptions, drugs, medicines,  
23 medical devices, chemicals, and poisons are sold, offered for  
24 sale, compounded, or dispensed and shall include all places  
25 whose title may imply the sale, offering for sale,  
26 compounding, or dispensing of prescriptions, drugs, medicines,  
27 chemicals, or poisons.

1           "(3) PHARMACY BENEFIT MANAGEMENT PLAN. An  
2 arrangement for the delivery of pharmacist services in which a  
3 pharmacy benefit manager undertakes to administer the payment  
4 or reimbursement of any of the costs of pharmacist services  
5 for an enrollee on a prepaid or insured basis that contains  
6 one or more incentive arrangements intended to influence the  
7 cost or level of pharmacist services between the plan sponsor  
8 and one or more pharmacies with respect to the delivery of  
9 pharmacist services and requires or creates benefit payment  
10 differential incentives for enrollees to use under contract  
11 with the pharmacy benefit manager.

12           "(4) PHARMACY BENEFIT MANAGER. A business that  
13 administers the prescription drug or device portion of  
14 pharmacy benefit management plans or health insurance plans on  
15 behalf of plan sponsors, insurance companies, unions, and  
16 health maintenance organizations. The term includes a person  
17 or entity acting for a pharmacy benefit manager in a  
18 contractual or employment relationship in the performance of  
19 pharmacy ~~benefits~~ benefit management for a managed care  
20 company, nonprofit hospital or medical service organization,  
21 insurance company, or third-party payor.

22           "(5) PHARMACIST SERVICES. Offering for sale,  
23 compounding, or dispensing of prescriptions, drugs, medicines,  
24 chemicals, or poisons pursuant to a prescription. Pharmacist  
25 services also includes the sale or provision of, counseling  
26 of, or fitting of medical devices, including prosthetics and  
27 durable medical equipment.

1                   "§34-23-184.

2                   "(a) The entity conducting an audit shall follow  
3 these procedures:

4                   "(1) The pharmacy contract shall identify and  
5 describe in detail the audit procedures.

6                   "(2) The entity conducting the on-site audit shall  
7 give the pharmacy written notice at least two weeks before  
8 conducting the initial on-site audit for each audit cycle. If  
9 the pharmacy benefit manager does not include their auditing  
10 guidelines within their provider manual, then the notice must  
11 include a documented checklist of all items being audited and  
12 the manual, including the name, date, and edition or volume,  
13 applicable to the audit and auditing guidelines. For on-site  
14 audits a pharmacy benefit manager shall also provide a list of  
15 material that is copied or removed during the course of an  
16 audit to the pharmacy. The pharmacy benefit manager may  
17 document this material on either a checklist or on an audit  
18 acknowledgement form. The pharmacy shall produce any items  
19 during the course of the audit or within 30 days of the  
20 on-site audit.

21                   "(3) The entity conducting the on-site audit may not  
22 interfere with the delivery of pharmacist services to a  
23 patient and shall utilize every effort to minimize  
24 inconvenience and disruption to pharmacy operations during the  
25 audit process.

1           "(4) An audit that involves clinical or professional  
2 judgment shall be conducted by or in consultation with a  
3 licensed pharmacist.

4           "(5) The audit shall not consider as fraud any  
5 clerical or record-keeping error, such as a typographical  
6 error, scrivener's error, or computer error regarding a  
7 required document or record; however, such errors may be  
8 subject to recoupment, provided that a pharmacy shall not be  
9 subject to a charge-back or recoupment for a clerical or  
10 record-keeping error in a required document or record,  
11 including a typographical or computer error, unless the error  
12 resulted in overpayment to the pharmacy. The pharmacy shall  
13 have the right to submit amended claims through an online  
14 submission to correct clerical or record-keeping errors in  
15 lieu of recoupment of a claim where no actual financial harm  
16 to the patient or plan has occurred, provided that the  
17 prescription was dispensed according to prescription  
18 documentation requirements set forth by the Alabama Pharmacy  
19 Act and within the plan limits. The pharmacy shall not be  
20 subject to recoupment of funds by the pharmacy ~~benefits~~  
21 benefit manager unless the pharmacy ~~benefits~~ benefit manager  
22 can provide proof of intent to commit fraud or such error  
23 results in actual financial harm to the pharmacy ~~benefits~~  
24 benefit manager, a health insurance plan managed by the  
25 pharmacy ~~benefits~~ benefit manager, or a consumer. A person  
26 shall not be subject to criminal penalties for errors provided

1 for in this subsection without proof of intent to commit  
2 fraud, waste, or abuse.

3 "a. Any amount to be charged back or recouped due to  
4 overpayment shall not exceed the amount the pharmacy was  
5 overpaid.

6 "b. The auditing entity shall not include the  
7 dispensing fee in the calculation of an overpayment unless a  
8 prescription is considered a misfill. As used in this  
9 paragraph, misfill means a prescription that was not  
10 dispensed, a prescription in which the prescriber denied the  
11 authorization request, a prescription in which an additional  
12 dispensing fee was charged, or a prescription error, not  
13 including a clerical, record-keeping, typographical, or  
14 computer error.

15 "(6) An entity conducting an audit shall not require  
16 any documentation that is not required by state and federal  
17 law or Alabama Medicaid. The information shall be considered  
18 to be valid if documented on the prescription, computerized  
19 treatment notes, pharmacy system, or other acceptable medical  
20 records.

21 "(7) Unless superseded by state or federal law,  
22 auditors shall only have access to previous audit reports on a  
23 particular pharmacy conducted by the auditing entity for the  
24 same pharmacy ~~benefits~~ benefit manager, health plan, or  
25 insurer. An auditing vendor contracting with multiple pharmacy  
26 ~~benefits~~ benefit managers or health insurance plans shall not  
27 use audit reports or other information gained from an audit on

1 a particular pharmacy to conduct another audit for a different  
2 pharmacy ~~benefits~~ benefit manager or health insurance plan.

3 "(8) Audit results shall be disclosed to the health  
4 benefit plan in a manner pursuant to contract terms.

5 "(9) A pharmacy may use the records of a hospital,  
6 physician, or other authorized practitioner of the healing  
7 arts for drugs or medicinal supplies written or transmitted by  
8 any means of communication for the purposes of validating the  
9 pharmacy record with respect to orders or refills of a legend  
10 or narcotic drug.

11 "(10) If the pharmacy benefit manager or its  
12 representative conducts an audit, the sample size shall not be  
13 greater than 150 prescriptions, provided that a refill does  
14 not constitute a separate prescription for the purposes of  
15 this subdivision.

16 "~~(10)~~ (11) Reasonable costs associated with the  
17 audit shall be the responsibility of the auditing entity with  
18 the exception of Alabama Medicaid if the claims sample exceeds  
19 100 unique prescription hard copies.

20 "~~(11)~~ (12) A finding of an overpayment or an  
21 underpayment may be a projection based on the number of  
22 patients served having a similar diagnosis or on the number of  
23 similar orders or refills for similar drugs, except that  
24 recoupment shall be based on the actual overpayment or  
25 underpayment of actual claims.

26 "~~(12)~~ (13) A finding of an overpayment may not  
27 include the cost of the drugs that were dispensed in



1 accordance with the prescriber's orders, provided the  
2 prescription was dispensed according to prescription  
3 documentation requirements set forth by the Alabama Pharmacy  
4 Act and within the plan limits. A finding of an overpayment  
5 may not include the dispensing fee amount unless any of the  
6 following apply:

7 "a. A prescription was not actually dispensed.

8 "b. The prescriber denied authorization.

9 "c. The prescription dispensed was a medication  
10 error by the pharmacy.

11 "d. The identified overpayment is solely based on an  
12 extra dispensing fee.

13 "~~(13)~~ (14) Each pharmacy shall be audited under the  
14 same standards and parameters as other similarly situated  
15 pharmacies audited by the entity and must be audited under  
16 rules applicable to the contractor and time period of the  
17 prescription.

18 "~~(14)~~ (15) Where not superseded by state or federal  
19 law, the period covered by an audit may not exceed two years  
20 from the date the claim was submitted to or adjudicated by a  
21 managed care company, nonprofit hospital or medical service  
22 organization, health benefit plan, third-party payor, pharmacy  
23 benefit manager, a health program administered by a department  
24 of the state, or any entity that represents those companies,  
25 groups, or department. An audit may not be conducted six  
26 months past the date the pharmacy benefit management plan  
27 terminated its contract to adjudicate claims with a pharmacy

1 benefit manager, health plan administrator, or any other  
2 entity representing those companies.

3 ~~"(15)~~ (16) An audit may not be initiated or  
4 scheduled during the first five calendar days of any month.

5 "(b) The entity shall provide the pharmacy with a  
6 written report of the audit and comply with all of the  
7 following requirements:

8 "(1) The preliminary audit report shall be delivered  
9 to the pharmacy within 90 days after the conclusion of the  
10 audit, with a reasonable extension to be granted upon request.

11 "(2) A pharmacy shall be allowed at least 30 days  
12 following receipt of the preliminary audit report in which to  
13 produce documentation to address any discrepancy found during  
14 the audit, with a reasonable extension to be granted upon  
15 request.

16 "(3) A final audit report shall be delivered to the  
17 pharmacy within 180 days after receipt of the preliminary  
18 audit report or final appeal, as provided for in Section  
19 34-23-185, whichever is later.

20 "(4) The audit documents shall be signed by the  
21 auditors assigned to the audit. The acknowledgement or receipt  
22 shall be signed by the auditor and the audit report shall  
23 contain clear contact information of the representative of the  
24 auditing organization.

25 "(5) Recoupments of any disputed funds, or repayment  
26 of funds to the entity by the pharmacy if permitted pursuant  
27 to contractual agreement, shall occur after final internal

1 disposition of the audit, including the appeals process as ~~set~~  
2 ~~forth~~ provided for in Section 34-23-185. If the identified  
3 discrepancy for an individual audit exceeds twenty-five  
4 thousand dollars (\$25,000), future payments in excess of that  
5 amount to the pharmacy may be withheld pending finalization of  
6 the audit.

7 "(6) Interest shall not accrue during the audit  
8 period.

9 "(7) Each entity conducting an audit shall provide a  
10 copy of the final audit report, after completion of any review  
11 process, to the plan sponsor in a manner pursuant to a  
12 contract.

13 "§34-23-185.

14 "(a) Each entity conducting an audit shall establish  
15 a written appeals process under which a pharmacy may appeal an  
16 unfavorable preliminary audit report to the entity.

17 "(b) ~~If, following the appeal,~~ Following the appeal,  
18 if the entity finds that an unfavorable audit report or any  
19 portion thereof is unsubstantiated, the entity shall dismiss  
20 the audit report or that portion without the necessity of any  
21 further action.

22 "(c) ~~If, following the appeal,~~ Following the appeal,  
23 if any of the issues raised in the appeal are not resolved to  
24 the satisfaction of either party, that party may ask for  
25 mediation of those unresolved issues unless other remedies are  
26 granted under the terms of the contract. A certified mediator  
27 shall be chosen by agreement of the parties from the mediators

1 list maintained by the Alabama Supreme Court. The cost of  
2 mediation shall be borne by agreement of the parties or by the  
3 decision of the mediator.

4 "§34-23-186.

5 "(a) Notwithstanding any other provision in this  
6 article or state or federal law, the entity conducting the  
7 audit may not use the accounting practice of extrapolation in  
8 calculating recoupments or penalties for audits. An  
9 extrapolation audit means an audit of a sample of prescription  
10 drug benefit claims submitted by a pharmacy to the entity  
11 conducting the audit that is then used to estimate audit  
12 results for a larger batch or group of claims not reviewed by  
13 the auditor. Future fills or refills beyond the current claim  
14 date may not be subject to recoupment due to an assumption of  
15 error under extrapolation procedure. The auditing entity shall  
16 not use extrapolation to calculate penalties or amounts to be  
17 charged back or recouped unless otherwise required by federal  
18 requirements or federal plans.

19 "(b) The auditing entity conducting a pharmacy audit  
20 shall not compensate an employee or contractor with which an  
21 auditing entity contracts to conduct a pharmacy audit based on  
22 the amount claimed or the actual amount recouped by the  
23 pharmacy being audited."

24 Section 2. This act shall become effective on the  
25 first day of the third month following its passage and  
26 approval by the Governor, or its otherwise becoming law.