

SENATE BILL 1065

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 7, Part 31, relative to Pharmacy Benefit
Managers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the Pharmacy Benefit Integrity Act.

SECTION 2. Tennessee Code Annotated, Section 56-7-3103, is amended by adding the following as new subsections to be appropriately designated:

(d) A pharmacy provider may use any prescription that meets the requirements of being a legal prescription as defined by applicable Tennessee law, to validate claims submitted for reimbursement for dispensing of original and refill prescriptions, or changes made to prescriptions.

(e) Due to patient privacy concerns, auditors are not permitted to enter the prescription department of a pharmacy where patient protected health information is maintained and stored. During the auditing process, auditors are to remain out of sight and hearing range of the pharmacy's customers. The pharmacy is responsible for finding an area that fulfills this requirement for auditors to use during the auditing process.

(f) A demand for recoupment, repayment or offset against future reimbursement for an overpayment on a claim for dispensing of an original or refill prescription shall not include the dispensing fee, unless the prescription that is subject of the claim was not actually dispensed or the prescription was not valid.

(g) Where not superseded by state or federal law, audit information from an audit conducted under a specific pharmacy provider agreement for a single plan may not

be shared or utilized in any audit for another plan under the same pharmacy provider agreement or for a plan under a different pharmacy provider agreement.

(h) No audit finding or demand for recoupment, repayment or offset against future reimbursement shall be made for any claim for dispensing of an original or refill prescription for the reason of information missing from a prescription or for information not placed in a particular location on a prescription when the information or location of the information is not required or specified by federal or state law.

(i) In the event the actual quantity dispensed on a valid prescription for a covered beneficiary exceeds the allowable maximum days supply of the product as defined in the applicable pharmacy benefit provider agreement, the amount allowed to be recouped, repaid or offset against future reimbursement shall be limited to an amount that is calculated based on the quantity of the product dispensed found to be in excess of the allowed days supply quantity and using the cost of the product as reflected on the original claim. A demand for recoupment, repayment, or offset against future reimbursement for the cost of the quantity exceeding the allowed days supply shall not include the dispensing fee.

(j) A pharmacy provider shall be allowed to dispense and shall be reimbursed for the full quantity of a commercially packaged product, including but not limited to eye drops, insulin, and topical products, that is required to be dispensed to meet the days supply ordered by the prescriber, even if the full quantity of the commercially prepared package exceeds the maximum days supply allowed.

(k) When calculating the day's supply, the highest dose prescribed shall be used to determine the quantity to be dispensed.

(l) A pharmacy benefits manager or an auditing company performing an audit on behalf of a pharmacy benefits manager may not compensate an auditor, whether the

auditor is an employee or independent contractor, based on a percentage of the amount demanded for recoupment, repayment or offset against future reimbursement.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2011, the public welfare requiring it.