

CHAPTER 76

(HB 414)

AN ACT relating to pharmacy audits.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in Sections 1 to 3 of this Act, unless the context otherwise requires:*
 - (a) *"Administrator" has the meaning provided in KRS 304.9-051;*
 - (b) *"Auditing entity" means an insurer or an administrator that conducts or arranges for the performance of an audit of a pharmacy's records for the purpose of determining compliance with pharmacy benefit requirements; and*
 - (c) *"Insurer" has the meaning provided in KRS 304.17A-005.*
- (2) *A provider agreement or provider contract between a pharmacy and an insurer, an agency of the Commonwealth, a pharmacy benefits administrator, or a pharmacy benefits manager that allows an audit of the pharmacy's records by an auditing entity shall comply with Sections 2 and 3 of this Act.*

➔SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

When an audit of the records of a pharmacy is conducted by an auditing entity, it shall be subject to the following conditions:

- (1) *The auditing entity shall give at least thirty (30) days' written notice to the pharmacy prior to conducting the audit for each audit to be conducted;*
- (2) *An audit performed by the auditing entity that involves clinical or professional judgment shall be conducted in consultation with a pharmacist;*
- (3) *A pharmacy may use the records of a hospital, physician, or other practitioner as defined in KRS 217.015(35), or transmitted by any means of communication, for purposes of validating pharmacy records with respect to orders or refills of a drug;*
- (4) *The recoupment of claims shall be based on the actual overpayment or underpayment of claims unless the pharmacy agrees to a settlement to the contrary;*
- (5) *A pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the auditing entity;*
- (6) *The period covered by the audit shall not exceed two (2) years from the date the claim was submitted for payment except if a longer period is allowed by federal law or if there is evidence of fraud;*
- (7) *An audit shall not be scheduled during the first seven (7) calendar days of any month, unless consented to by the pharmacy;*
- (8) *A preliminary audit report shall be delivered to the pharmacy within one hundred twenty (120) days after the exit interview;*
- (9) *A final audit report shall be delivered to the pharmacy within six (6) months after receipt of the preliminary audit report or after all appeals have been exhausted, whichever is later;*
- (10) *The auditing entity shall allow a pharmacy at least thirty (30) days following receipt of the preliminary audit report to produce documentation to address any discrepancies found during an audit;*
- (11) *The final audit report shall provide claim-level detail of the amounts and reasons for each claim recovery found due. If no amounts have been found due, the final audit report shall so state;*
- (12) *The auditing entity shall not receive payment based on a percentage of the amount recovered in an audit; and*

(13) *The auditing entity shall conduct an exit interview at the close of the audit. The exit interview shall be conducted at a time agreed to by the audited pharmacy. The interview shall provide the audited pharmacy an opportunity to:*

- (a) *Respond to questions from the auditing entity;*
- (b) *Review and comment on the initial findings of the auditing entity; and*
- (c) *Provide additional documentation to clarify the initial findings of the auditing entity.*

➔SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The auditing entity conducting an audit shall establish an appeals process under which a pharmacy may appeal a final audit report. The auditing entity shall provide to the pharmacy, prior to or at the time of the delivery of the preliminary audit report, a written explanation of the appeals process, including the name, address, and phone number of the person to whom the appeal should be addressed.*
- (2) *Following the appeal if it is determined that an audit report or any portion thereof is unsubstantiated, the audit report or unsubstantiated portion shall be dismissed without the necessity of further proceedings.*
- (3) *The auditing entity shall not recoup disputed funds or collect interest on disputed funds until the final internal disposition of the audit, including the appeals process set forth in subsection (1) of this section.*

➔SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 3 of this Act shall not apply to any audit conducted by or on behalf of a state agency or a Medicaid managed care organization pursuant to KRS Chapter 205.

➔SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 3 of this Act shall not apply to any audit conducted in which an allegation of fraud, willful misrepresentation, or abuse is made by the auditing entity regarding the audited pharmacy.

Signed by the Governor March 24, 2009.