

CHAPTER 20

(HB 349)

AN ACT relating to pharmacy audits.

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

→Section 1. KRS 304.17A-741 is amended 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) ***An auditing entity shall not require a pharmacy to keep records for a period of time longer than two (2) years, or as required by state or federal law or regulation;***
- (5) 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;
- ~~(6)(5)~~ A pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the auditing entity;
- ~~(7)(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;
- ~~(8)(7)~~ An audit shall not be scheduled during the first seven (7) calendar days of any month, unless consented to by the pharmacy;
- ~~(9)(8)~~ A preliminary audit report shall be delivered to the pharmacy within one hundred twenty (120) days after the exit interview;
- ~~(10)(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;
- ~~(11)(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;
- ~~(12)(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;
- ~~(13)(12)~~ The auditing entity shall not receive payment based on ~~on a percentage of~~ the amount recovered in an audit; ~~and~~
- ~~(14)(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;
- (15) ***If an audit results in the identification of any clerical or recordkeeping errors such as typographical errors, scrivener's errors, omissions, or computer errors, the pharmacy shall not be subject to recoupment of funds by the auditing entity unless the auditing entity can provide proof of intent to commit fraud or the error results in an actual overpayment to the pharmacy or the wrong medication being dispensed to the patient. The pharmacy shall have the right to submit amended claims within thirty (30) days of the discovery of an***

error to correct clerical or recordkeeping errors in lieu of recoupment if the prescription was dispensed according to requirements set forth in state or federal law;

(16) In the case of overpayment, the auditing entity may seek a refund or recoupment of the overpayment in accordance with KRS 304.17A-712. The amount refunded or recouped shall be limited to the amount paid to the pharmacy minus the amount that should have been paid to the pharmacy absent the overpayment and shall not include the dispensing fee if the correct medication was dispensed to the patient; and

(17) Claims shall be paid pursuant to KRS 304.17A-702.

→ Section 2. KRS 304.17A-745 is amended to read as follows:

KRS 304.17A-740 to 304.17A-743 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 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

A managed care organization that provides Medicaid benefits pursuant to this chapter shall comply with the provisions of KRS 304.17A-740 to 304.17A-743.

Signed by Governor April 4, 2012.