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HOUSE BILL 482

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO PHARMACY; ESTABLISHING A PHARMACY RECORDS AUDIT
PROCESS; PROVIDING FOR AN APPEAL PROCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Pharmacy Act is enacted
to read:

"[NEW MATERIAL] AUDIT OF PHARMACY RECORDS.--

A. As used in this section, "entity" means a
managed care company, insurance company, third-party payor or
the representative of the managed care company, insurance
company or third-party payor.

B. An audit of the records of a pharmacy by an
entity shall be conducted in accordance with the following
criteria:

(1) the entity conducting the initial on-site

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1 audit shall give the pharmacy notice at least two weeks prior
2 to conducting the initial on-site audit for each audit cycle;

3 (2) an audit that involves clinical or
4 professional judgement shall be conducted by or in consultation
5 with a pharmacist;

6 (3) a clerical or record-keeping error,
7 regarding a required document or record, shall not necessarily
8 constitute fraud but such a claim:

9 (a) may be subject to recoupment; and

10 (b) shall not be subject to criminal
11 penalties without proof of intent to commit fraud;

12 (4) a pharmacy may use the records of a
13 hospital, physician or other authorized practitioner of the
14 healing arts for drugs or medicinal supplies written or
15 transmitted by any means of communication for purposes of
16 validating the pharmacy record with respect to orders or
17 refills of a dangerous drug or narcotic drug;

18 (5) a finding of an overpayment or
19 underpayment shall not be a projection based on the number of
20 patients served having a similar diagnosis or on the number of
21 similar orders or refills for similar drugs and recoupment of
22 claims shall be based on the actual overpayment or underpayment
23 unless the projection for overpayment or underpayment is part
24 of a settlement as agreed to by the pharmacy;

25 (6) each pharmacy shall be audited under the

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1 same standards and parameters as other similarly situated
2 pharmacies audited by the entity;

3 (7) a pharmacy shall be allowed at least sixty
4 days following receipt of the preliminary audit report in which
5 to produce documentation to address any discrepancy found
6 during an audit;

7 (8) the period covered by an audit shall not
8 exceed one year from the date the claim was submitted to or
9 adjudicated by an entity;

10 (9) an audit shall not be initiated or
11 scheduled during the first seven calendar days of a month due
12 to the high volume of prescriptions filled during that time
13 unless otherwise consented to by the pharmacy;

14 (10) the preliminary audit report shall be
15 delivered to the pharmacy within one hundred twenty days after
16 conclusion of the audit and the final report shall be delivered
17 to the pharmacy within six months after receipt of the
18 preliminary audit report or final appeal, as provided for in
19 Subsection C of this section, whichever is later;

20 (11) the audit criteria set forth in this
21 subsection shall apply only to audits of claims submitted for
22 payment after July 1, 2007; and

23 (12) notwithstanding any other provision in
24 this subsection, the entity conducting the audit shall not use
25 the accounting practice of extrapolation in calculating

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