

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:

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

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

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

(a) may be subject to recoupment; and

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

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

(5) a finding of an overpayment or underpayment shall not be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs and recoupment of claims shall be based on the actual overpayment or underpayment unless the entity demonstrates a statistically justifiable method of projection or the projection for overpayment or underpayment is part of a settlement as agreed to by the pharmacy;

(6) each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(7) a pharmacy shall be allowed at least twenty-one business days, with reasonable extensions allowed, following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during

an audit;

(8) the period covered by an audit shall not exceed two years, unless otherwise provided by contractual agreement, from the date the claim was submitted to or adjudicated by an entity or unless it conflicts with state or federal law;

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

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

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

(12) notwithstanding any other provision in this subsection, the entity conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.

C. Recoupment of any disputed funds shall occur

after final internal disposition of the audit, including the appeals process set forth in Subsection D of this section. Should the identified discrepancy for an individual audit exceed twenty-five thousand dollars (\$25,000), future payments to the pharmacy may be withheld pending finalization of the audit.

D. Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity. If, following the appeal, the entity finds that an unfavorable audit report or any portion of the audit is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the report of the audit without the necessity of any further proceedings.

E. This section does not apply to any investigative audit that involves probable or potential fraud, willful misrepresentation." _____