

SECOND REGULAR SESSION

# HOUSE BILL NO. 1332

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SATER (Sponsor), WALLACE AND WELLS (Co-sponsors).

Pre-filed December 3, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3027L.01I

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### AN ACT

To amend chapter 338, RSMo, by adding thereto one new section relating to pharmacists and pharmacies.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 338, RSMo, is amended by adding thereto one new section, to be  
2 known as section 338.600, to read as follows:

**338.600. 1. This section shall be known and may be cited as the "Pharmacy Audit  
2 Bill of Rights Act of 2008".**

**3 2. Notwithstanding any other provision of law to the contrary, when an audit of the  
4 records of a pharmacy licensed in this state is conducted by a managed care company,  
5 insurance company, third-party payor, the department of insurance, the board of  
6 pharmacy, or any entity that represents such companies, groups, department, or board,  
7 such audit shall be conducted in accordance with the following bill of rights:**

**8 (1) The entity conducting the initial on-site audit shall provide the pharmacy with  
9 notice at least one week prior to conducting the initial on-site audit for each audit cycle;**

**10 (2) Any audit which involves clinical or professional judgment shall be conducted  
11 by or in consultation with a licensed pharmacist;**

**12 (3) Any clerical or recordkeeping error, such as a typographical error, scriveners  
13 error, or computer error, regarding a required document or record shall not in and of  
14 itself constitute fraud; except that, such claims may be subject to recoupment. No such  
15 claim shall be subject to criminal penalties without proof of intent to commit fraud;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

20           (5) A finding of an overpayment or underpayment may be a projection based on  
21 the number of patients served having a similar diagnosis or on the number of similar  
22 orders or refills for similar drugs; except that, recoupment of claims shall be based on the  
23 actual overpayment or underpayment unless the projection for overpayment or  
24 underpayment is part of a settlement as agreed to by the pharmacy;

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

27           (7) A pharmacy shall be allowed at least thirty days following receipt of the  
28 preliminary audit report in which to produce documentation to address any discrepancy  
29 found during an audit;

30           (8) The period covered by an audit shall not exceed two years from the date the  
31 claim was submitted to or adjudicated by a managed care company, insurance company,  
32 third-party payor, the state of Missouri, or any entity that represents such companies or  
33 groups, or the state of Missouri;

34           (9) An audit shall not be initiated or scheduled during the first seven calendar days  
35 of any month due to the high volume of prescriptions filled during such time unless  
36 otherwise consented to by the pharmacy;

37           (10) The preliminary audit report shall be delivered to the pharmacy within one  
38 hundred twenty days after conclusion of the audit. A final audit report shall be delivered  
39 to the pharmacy within six months of receipt of the preliminary audit report or final  
40 appeal, as provided for in subsection 3 of this section;

41           (11) The audit criteria set forth in this subsection shall apply only to audits of  
42 claims submitted for payment after July 1, 2006. Notwithstanding any other provision in  
43 this subsection, the entity conducting the audit shall not use the accounting practice of  
44 extrapolation in calculating recoupments or penalties for audits.

45           3. Recoupments of any disputed moneys shall only occur after final internal  
46 disposition of the audit, including the appeals process set forth in subsection 4 of this  
47 section.

48           4. Each entity conducting an audit shall establish an appeals process under which  
49 a licensed pharmacy may appeal an unfavorable preliminary audit report to the entity. If,  
50 following such appeal, the entity finds that an unfavorable audit report or any portion

51 **thereof is unsubstantiated, the entity shall dismiss the audit report or such portion without**  
52 **the necessity of any further proceedings.**

53 **5. Each entity conducting an audit shall provide a copy of the final audit report,**  
54 **after completion of any review process, to the plan sponsor.**

55 **6. This section shall not apply to any investigative audit which involved fraud,**  
56 **willful misrepresentation, or abuse.**

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