SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1332

94TH GENERAL ASSEMBLY

Reported from the Committee on Health and Mental Health, May 13, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3027S.06C

AN ACT

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

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 known as section 338.600, to read as follows:

338.600. 1. Notwithstanding any other provision of law to the contrary, when an audit of the records of a pharmacy licensed in this state is conducted by a managed care company, insurance company, third-party payor, the department of insurance, financial institutions and professional registration, or any entity that represents such companies, groups, or department, such audit shall be conducted in accordance with the following:

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

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

(3) Any clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error, regarding a required document or record shall not in and of itself constitute fraud or grounds for recoupment; except that, such claims may be otherwise subject to recoupment or payment of any discovered underpayment. No such claim shall 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 involving 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 legend or narcotic drug. Electronically stored images of prescriptions, electronically created annotations and other related supporting documentation shall be considered valid prescription records. Hard copy and electronic signature logs that indicate the delivery of pharmacy services shall be considered valid proof of receipt of such services by a program enrollee;

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

(6) Retail, hospital, and mail order pharmacies shall be audited under the same standards and parameters as other pharmacies of the same class audited by the entity;

(7) A pharmacy shall be allowed at least thirty days 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 the audit shall not exceed a two-year period beginning two years prior to the initial date of the on-site portion of the audit. The audit shall only review claims that, during the same audit period, were submitted to or adjudicated by the managed care company, insurance company, third-party payor, the state of Missouri, or any entity that represents such company or group conducting the audit;

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

(10) The preliminary audit report shall be delivered to the pharmacy within one hundred twenty days after conclusion of the audit, with reasonable extensions permitted. A final audit report shall be delivered to the pharmacy within six months of receipt by the pharmacy of the preliminary audit report or final appeal, as provided

for in subsection 3 of this section, whichever is later;

(11) 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, except as otherwise authorized under subdivision (5) of this subsection.

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

3. Each entity conducting an audit shall establish an appeals process, lasting no longer than six months, under which a licensed pharmacy may appeal an unfavorable preliminary audit report to the entity. If, following such appeal, the entity finds that an unfavorable audit report or any portion thereof is unsubstantiated, the entity shall dismiss the audit report or such portion without the necessity of any further proceedings.

4. Each entity conducting an audit shall provide a copy of the final audit report, after completion of any appeal process, to the plan sponsor.

5. This section shall not apply to any audit conducted as a part of an investigation regarding alleged criminal wrongdoing, willful misrepresentation, or abuse.

6. This section shall not apply to any audit conducted as part of any inspection or investigation conducted by the board of pharmacy.

7. Unless required by federal law, no contract entered into or renewed after the effective date of this section shall contain audit criteria provisions that are more restrictive than the audit criteria provisions contained in this section.

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