

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.

3027S.06C

TERRY L. SPIELER, Secretary.

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
2 section, to be known as section 338.600, to read as follows:

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

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

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

13 **(3) Any clerical or recordkeeping error, such as a typographical
14 error, scrivener's error, or computer error, regarding a required
15 document or record shall not in and of itself constitute fraud or
16 grounds for recoupment; except that, such claims may be otherwise
17 subject to recoupment or payment of any discovered underpayment. No
18 such claim shall be subject to criminal penalties without proof of intent
19 to commit fraud;**

20 (4) A pharmacy may use the records of a hospital, physician, or
21 other authorized practitioner of the healing arts involving drugs or
22 medicinal supplies written or transmitted by any means of
23 communication for purposes of validating the pharmacy record with
24 respect to orders or refills of a legend or narcotic drug. Electronically
25 stored images of prescriptions, electronically created annotations and
26 other related supporting documentation shall be considered valid
27 prescription records. Hard copy and electronic signature logs that
28 indicate the delivery of pharmacy services shall be considered valid
29 proof of receipt of such services by a program enrollee;

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

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

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

42 (8) The period covered by the audit shall not exceed a two-year
43 period beginning two years prior to the initial date of the on-site
44 portion of the audit. The audit shall only review claims that, during
45 the same audit period, were submitted to or adjudicated by the
46 managed care company, insurance company, third-party payor, the
47 state of Missouri, or any entity that represents such company or group
48 conducting the audit;

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

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

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

58 (11) Notwithstanding any other provision in this subsection, the
59 entity conducting the audit shall not use the accounting practice of
60 extrapolation in calculating recoupments or penalties for audits, except
61 as otherwise authorized under subdivision (5) of this subsection.

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

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

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

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

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

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

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