

SENATE BILL NO. 8

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY SENATOR EGAN

Introduced: 1/7/13

Referred: Prefiled

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing procedures and guidelines for auditing pharmacy records; and**
2 **providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 08.80 is amended by adding a new section to read:

5 **Sec. 08.80.477. Pharmacy audits.** (a) When an audit of the records of a
6 pharmacy licensed in this state is conducted by an insurer, managed care company,
7 hospital or medical service corporation, third-party payor, pharmacy benefits manager,
8 or health plan administered by the state,

9 (1) for each audit cycle, the auditor shall provide the pharmacy or
10 pharmacist with notice of the audit at least two weeks before conducting the initial on-
11 site audit;

12 (2) unless the pharmacy and the auditor agree otherwise, the audit may
13 not be scheduled to occur during the first seven business days of a month because of
14 the high volume of prescriptions that are filled during that time;

1 (3) an insurer, managed care company, hospital or medical service
2 corporation, third-party payor, pharmacy benefits manager, or health plan
3 administered by the state may not conduct an audit within 90 days after an audit in
4 which no errors were found; in this paragraph, "error" does not mean a clerical error,
5 record-keeping error, or typographical error, unless the auditor

6 (A) reasonably determines that the error was intentional; or

7 (B) identifies a pattern of errors;

8 (4) the audit of a claim must occur within two years after the date the
9 claim was submitted;

10 (5) if the audit involves clinical or professional judgment, the audit
11 shall be conducted by or in consultation with a pharmacist licensed in this or another
12 state;

13 (6) the auditor shall audit each pharmacy using the same standards and
14 parameters as other similarly situated pharmacies;

15 (7) an auditor may not use the accounting practice of extrapolation to
16 establish an overpayment or underpayment or for calculating recoupment or penalties;

17 (8) a finding by the auditor of overpayment or underpayment shall be
18 based on an actual overpayment or underpayment and may not be based on a
19 projection based on the number of patients served who have a similar diagnosis or on
20 the number of similar orders or refills for similar drugs;

21 (9) calculation by an auditor of an overpayment may not include
22 dispensing fees for a prescription that was dispensed to the patient if any portion of the
23 claim and associated dispensing fee is payable by an insurer, managed care company,
24 hospital or medical service corporation, third-party payor, pharmacy benefits manager,
25 or health plan administered by the state;

26 (10) an auditor may not assess a charge-back, recoupment, or other
27 penalty against a pharmacy solely because a prescription is mailed or delivered at the
28 request of a patient as part of a routine business practice of the pharmacy;

29 (11) to the extent that an audit finds clerical or record-keeping errors in
30 a required document or record, the pharmacy may not be subject to recoupment unless
31 the clerical or record-keeping error results in actual financial harm to an insurer,

1 managed care company, hospital or medical service corporation, third-party payor,
2 pharmacy benefits manager, health plan administered by the state, or customer;

3 (12) the auditor shall deliver the preliminary audit report to the
4 pharmacy within 120 days after the completion of the audit;

5 (13) interest may not accrue from the date of completion of the audit to
6 the delivery date of the preliminary audit report, unless an auditor finds proof of intent
7 to commit fraud;

8 (14) a pharmacy shall be allowed at least 30 days following receipt of
9 a preliminary audit report to produce documentation to address a discrepancy found
10 during the audit; a pharmacy may use any record, including a record of a hospital,
11 physician, or other health care provider, or other written or electronic record to
12 validate a pharmacy record;

13 (15) the insurer, managed care company, hospital or medical service
14 corporation, third-party payor, pharmacy benefits manager, or health plan
15 administered by the state shall establish a written appeal process by which a pharmacy
16 may appeal an unfavorable preliminary or final audit report;

17 (16) the auditor shall deliver the final audit report to the pharmacy
18 within 90 days after receipt of the preliminary audit report or final appeal;

19 (17) the auditor may not receive compensation based on the percentage
20 of the amount recovered by the auditor;

21 (18) the auditor shall provide a copy of the final report to a health
22 benefit plan sponsor affected by the audit;

23 (19) patient information accessed in the course of an audit is
24 confidential and may not be used for marketing purposes.

25 (b) This section does not apply to

26 (1) a criminal investigation; or

27 (2) state Medicaid programs.

28 (c) In this section, "health benefit plan" has the meaning given in
29 AS 21.54.500.

30 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. This Act applies to pharmacy audits conducted on or after the
2 effective date of this Act.

3 * **Sec. 3.** This Act takes effect January 1, 2014.