

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 13-0751.01 Kristen Forrestal x4217

HOUSE BILL 13-1221

HOUSE SPONSORSHIP

May, Joshi

SENATE SPONSORSHIP

Tochtrop, Crowder

House Committees

Public Health Care & Human Services

Senate Committees

Health & Human Services

A BILL FOR AN ACT

101 **CONCERNING STANDARDS FOR THE AUDIT OF PHARMACIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill sets standards for a pharmacy benefit manager or entity acting on behalf of a pharmacy benefit manager (auditing entity) to follow when auditing a pharmacy or other dispensing entity. The auditing entity shall:

- ! Give written notice prior to conducting an audit;
- ! Conduct an audit in consultation with a licensed pharmacist when required;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
March 27, 2013

HOUSE
3rd Reading Unamended
February 26, 2013

HOUSE
Amended 2nd Reading
February 25, 2013

- ! Not use certain techniques in calculating the amount of recoupment or penalty;
- ! Allow a pharmacy to resubmit a claim if an audit results in the dispute or denial of a claim and the time permitted has not expired;
- ! Establish a written appeals process that includes procedures to allow a pharmacy to appeal to the pharmacy benefit manager the preliminary reports and final reports resulting from the audit; and
- ! Not subject a pharmacy to the recoupment of funds for a clerical error unless the error resulted in financial harm to another entity.

An audit may only cover the 24-month period prior to the date that the prescription was submitted to or adjudicated by the auditing entity. The bill specifies what documents may be used to validate claims and the pharmacy record and delivery.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 10-16-122.5 as
3 follows:

4 **10-16-122.5. Pharmacy benefit manager - audit of pharmacies.**

5 (1) A PHARMACY BENEFIT MANAGER, A CARRIER, OR AN ENTITY ACTING
6 ON BEHALF OF A PHARMACY BENEFIT MANAGER OR A CARRIER THAT
7 AUDITS A PHARMACY SHALL:

8 (a) GIVE THE PHARMACY AT LEAST SEVEN DAYS' WRITTEN NOTICE
9 PRIOR TO COMMENCING AN AUDIT;

10 (b) CONDUCT THE AUDIT BY OR IN CONSULTATION WITH A
11 LICENSED PHARMACIST TO THE EXTENT THE AUDIT REQUIRES THE
12 APPLICATION OF CLINICAL OR PROFESSIONAL JUDGMENT;

13 (c) NOT USE EXTRAPOLATION OR OTHER STATISTICAL EXPANSION
14 TECHNIQUES IN CALCULATING THE AMOUNT OF A RECOUPMENT OR
15 PENALTY RESULTING FROM AN AUDIT OF A PHARMACY;

16 (d) ALLOW THE PHARMACY TO PRODUCE ADDITIONAL CLAIMS

1 DOCUMENTATION USING ANY COMMERCIALLY REASONABLE METHOD,
2 INCLUDING FACSIMILE, MAIL, OR ELECTRONIC CLAIMS SUBMISSION, IF AN
3 AUDIT RESULTS IN THE DISPUTE OR DENIAL OF A CLAIM;

4 (e) ESTABLISH A WRITTEN APPEALS PROCESS THAT INCLUDES
5 PROCEDURES TO ALLOW A PHARMACY TO APPEAL TO THE PHARMACY
6 BENEFIT MANAGER OR THE CARRIER THE PRELIMINARY REPORTS
7 RESULTING FROM THE AUDIT AND ANY RESULTING RECOUPMENT OR
8 PENALTY; AND

9 (f) NOT SUBJECT A PHARMACY TO THE RECOUPMENT OF FUNDS
10 WHEN AN AUDIT RESULTS IN THE IDENTIFICATION OF A CLERICAL ERROR IN
11 A REQUIRED DOCUMENT OR RECORD UNLESS THE ERROR RESULTS IN
12 ACTUAL FINANCIAL HARM TO THE PHARMACY BENEFIT MANAGER, A
13 HEALTH BENEFIT PLAN PROVIDING PRESCRIPTION DRUG BENEFITS THAT
14 ARE MANAGED BY THE PHARMACY BENEFIT MANAGER, OR A CONSUMER.

15 (2) A PHARMACY MAY USE VERIFIABLE STATEMENTS OR RECORDS,
16 INCLUDING MEDICATION ADMINISTRATION RECORDS OF A NURSING HOME,
17 ASSISTED LIVING FACILITY, HOSPITAL, PHYSICIAN, OR OTHER AUTHORIZED
18 PRACTITIONER, TO VALIDATE THE PHARMACY RECORD AND DELIVERY.

19 (3) ANY LEGAL PRESCRIPTION MAY BE USED TO VALIDATE CLAIMS
20 IN CONNECTION WITH PRESCRIPTIONS, REFILLS, OR CHANGES IN
21 PRESCRIPTIONS, INCLUDING MEDICATION ADMINISTRATION RECORDS,
22 FAXES, ELECTRONIC PRESCRIPTIONS, OR DOCUMENTED TELEPHONE CALLS
23 FROM THE PRESCRIBER OR THE PRESCRIBER'S AGENT.

24 (4) THE TIME PERIOD COVERED BY AN AUDIT MAY NOT EXCEED
25 TWENTY-FOUR MONTHS FROM THE DATE THAT THE PRESCRIPTION WAS
26 SUBMITTED TO OR ADJUDICATED BY THE ENTITY, UNLESS A LONGER
27 PERIOD IS REQUIRED BY STATE OR FEDERAL LAW.

1 (5) THE TIME PERIODS SPECIFIED ARE WAIVED FOR AUDITS OF
2 PHARMACY RECORDS WHEN FRAUD OR OTHER INTENTIONAL OR WILLFUL
3 MISREPRESENTATION IS INDICATED THROUGH REVIEW OF CLAIMS DATA,
4 STATEMENTS, PHYSICAL REVIEW, OR OTHER INVESTIGATIVE METHODS. THE
5 PHARMACY BENEFIT MANAGER, CARRIER, OR ENTITY ACTING ON BEHALF
6 OF THE PHARMACY BENEFIT MANAGER OR CARRIER SHALL DELIVER TO THE
7 PHARMACY AT THE TIME OF THE AUDIT A WRITTEN OR VERBAL
8 EXPLANATION OF THE INFORMATION THAT LED TO THE CONCLUSION THAT
9 THERE IS AN INDICATION OF FRAUD OR OTHER INTENTIONAL OR WILLFUL
10 MISREPRESENTATION. THE EXPLANATION IS NOT REQUIRED IF LAW
11 ENFORCEMENT HAS INTERVENED DUE TO THE INDICATION OF FRAUD.

12 (6) AS USED IN THIS SECTION, "PHARMACY" INCLUDES ANY ENTITY
13 AUTHORIZED UNDER ARTICLE 42.5 OF TITLE 12, C.R.S., TO DISPENSE
14 PRESCRIPTION DRUGS.

15 **SECTION 2. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly (August
18 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within such period, then the act, item, section, or part will not take effect
22 unless approved by the people at the general election to be held in
23 November 2014 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.