

398 dispenses drugs intended for use by animals or for sale to veterinarians for the administration
399 for animals.

400 Section 4. Section **58-17b-622** is enacted to read:

401 **58-17b-622. Pharmacy benefit management services -- Auditing of pharmacy**
402 **records -- Appeals.**

403 (1) For purposes of this section:

404 (a) "Audit" means a review of the records of a pharmacy by or on behalf of an entity
405 that finances or reimburses the cost of health care services or pharmaceutical products.

406 (b) "Entity" includes:

407 (i) a pharmacy benefits manager or coordinator;

408 (ii) a health benefit plan;

409 (iii) a third party administrator as defined in Section 31A-1-301;

410 (iv) a state agency; or

411 (v) a company, group, or agent that represents, or is engaged by, one of the entities

412 described in Subsections (1)(b)(i) through (iv).

413 (c) "Fraud" means an intentional act of deception, misrepresentation, or concealment in
414 order to gain something of value.

415 (d) "Health benefit plan" means:

416 (i) a health benefit plan as defined in Section 31A-1-301; or

417 (ii) a health, dental, medical, Medicare supplement, or conversion program offered

418 under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

419 (2) (a) Except as provided in Subsection (2)(b), this section applies to:

420 (i) a contract for the audit of a pharmacy entered into, amended, or renewed on or after

421 July 1, 2012; and

422 (ii) an entity that conducts an audit of the pharmacy records of a pharmacy licensed

423 under this chapter.

424 (b) This section does not apply to an audit of pharmacy records $\hat{S}\rightarrow$:

424a (i) $\leftarrow\hat{S}$ for a federally funded

425 prescription drug program, including:

426 $\hat{S}\rightarrow$ [(fi)] (A) $\leftarrow\hat{S}$ the state Medicaid program;

427 $\hat{S}\rightarrow$ [(fii)] (B) $\leftarrow\hat{S}$ the Medicare Part D program;

428 $\hat{S}\rightarrow$ [(fiii)] (C) $\leftarrow\hat{S}$ a Department of Defense prescription drug program; $\hat{S}\rightarrow$ [or] $\leftarrow\hat{S}$

- 429 ~~§~~→ [(iv)] (D) ~~←~~§ a Veteran's Affairs prescription drug program ~~§~~→ ; or
- 429a **(ii) when fraud or other intentional and willful misrepresentation is alleged and the**
- 429b **pharmacy audit entity has evidence that the pharmacy's actions reasonably indicate fraud or**
- 429c **intentional and willful misrepresentation** ~~←~~§ .
- 430 (3) (a) An audit that involves clinical or professional judgment shall be conducted by
- 431 or in consultation with a licensed pharmacist who is employed by or working with the auditing
- 432 entity.
- 433 (b) If an audit is conducted on site at a pharmacy, the entity conducting the audit:
- 434 (i) shall give the pharmacy 10 days advanced written notice of:
- 435 (A) the audit; and
- 436 (B) the range of prescription numbers or a date range included in the audit; and
- 437 (ii) may not audit a pharmacy during the first five business days of the month, unless
- 438 the pharmacy agrees to the timing of the audit.
- 439 (c) An entity may not audit claims:
- 440 (i) submitted more than 18 months prior to the audit, unless:
- 441 (A) required by federal law; or
- 442 (B) the originating prescription is dated in the preceding 6 months; or
- 443 (ii) that exceed 200 selected prescription claims.
- 444 (4) (a) An entity may not:
- 445 (i) include dispensing fees in the calculations of overpayments unless the prescription
- 446 is considered a misfill;
- 447 (ii) recoup funds for prescription clerical or record keeping errors, including
- 448 typographical errors, scrivener's errors, and computer errors on a required document or record
- 449 ~~§~~→ **[in the absence of any other evidence deemed fraudulent] unless the audit entity is alleging**
- 449a **fraud or other intentional or willful misrepresentation and the audit entity has evidence that**
- 449b **the pharmacy's actions reasonably indicate fraud or intentional and willful**
- 449c **misrepresentation**~~←~~§ ; or
- 450 (iii) collect any funds, charge-backs, or penalties until the audit and all appeals are
- 451 final, unless the ~~§~~→ audit ~~←~~§ entity ~~§~~→ is alleging fraud or other intentional or willful
- 451a **misrepresentation and the audit entity ~~←~~§ has evidence ~~§~~→ [the actions by the pharmacy**
- 451b **constituted fraud] that the pharmacy's actions reasonably indicate fraud or intentional and**
- 451c **willful misrepresentation** ~~←~~§ .
- 452 (b) Auditors shall only have access to previous audit reports on a particular pharmacy
- 453 if the previous audit was conducted by the same entity except as required for compliance with

460 (6) (a) An entity that audits a pharmacy shall provide the pharmacy with a preliminary
461 audit report, delivered to the pharmacy or its corporate office of record within 60 days after
462 completion of the audit.

463 (b) A pharmacy has 30 days following receipt of the preliminary audit report to
464 respond to questions, provide additional documentation, and comment on and clarify findings
465 of the audit. Receipt of the report shall be based on the postmark date or the date of a
466 computer transmission if transferred electronically.

467 (7) If an audit results in the dispute or denial of a claim, the entity conducting the audit
468 shall allow the pharmacy to re-submit a claim using any commercially reasonable method,
469 including fax, mail, or electronic claims submission provided that the period of time when a
470 claim may be resubmitted has not expired under the rules of the plan sponsor.

471 (8) (a) Within 120 days after the completion of the appeals process under Subsection
472 (9), a final audit report shall be delivered to the pharmacy or its corporate office of record.

473 (b) The final audit report shall include a disclosure of any money recovered by the
474 entity that conducted the audit.

475 (9) An entity that audits a pharmacy shall establish a written appeals process for
476 appealing a preliminary audit report and a final audit report, and shall provide the pharmacy
477 with notice of the written appeals process. If the pharmacy benefit manager's contract or
478 provider manual contains the information required by this Subsection (9), the requirement for
479 notice is met.

480 ~~**§→ [(10) This section does not apply to any audit, review, or investigation that involves**~~
481 ~~**probable Medicaid fraud, probable Medicaid abuse, probable insurance fraud, or other criminal**~~
482 ~~**fraud or criminal misrepresentation]** ←~~§~~ .~~