

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 644
Committee Substitute Favorable 5/31/11

Short Title: Establish Pharmacy Audit Rights.

(Public)

Sponsors:

Referred to:

April 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH PHARMACY AUDIT RIGHTS AND TO ESTABLISH
3 STANDARDS FOR RECOUPMENT OF CLAIMS AND AUTHORIZING A THIRTY-
4 DAY PERIOD TO SUBMIT A WRITTEN REQUEST FOR A RECONSIDERATION
5 REVIEW TO THE DIVISION OF MEDICAL ASSISTANCE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new
8 Article to read:

9 "Article 4C.

10 "Pharmacy Audit Rights.

11 **"§ 90-85.50. Declaration of pharmacy rights during audit.**

12 (a) The following definitions apply in this Article:

13 (1) "Pharmacy" means a person or entity holding a valid pharmacy permit
14 pursuant to G.S. 90-85.21 or G.S. 90-85.21A.

15 (2) "Responsible party" means the entity responsible for payment of claims for
16 health care services other than (i) the individual to whom the health care
17 services were rendered or (ii) that individual's guardian or legal
18 representative.

19 (b) Notwithstanding any other provision of law, whenever a managed care company,
20 insurance company, third-party payer, or any entity that represents a responsible party conducts
21 an audit of the records of a pharmacy, the pharmacy has a right to all of the following:

22 (1) To have at least 21 days' advance notice of the initial on-site audit for each
23 audit cycle.

24 (2) To have any audit that involves clinical or professional judgment be done
25 with a pharmacist who is licensed in the state in which that pharmacist is
26 located, and is employed or working under contract with the auditing entity.

27 (3) Not to have clerical or record-keeping errors, including typographical errors,
28 scrivener's errors, and computer errors, on a required document or record, in
29 the absence of any other evidence, deemed fraudulent. This subdivision does
30 not prohibit recoupment of fraudulent payments.

31 (3a) If required under the terms of the contract, to have the auditing entity
32 provide a pharmacy, upon request, all records related to the audit in an
33 electronic format or contained in digital media.

34 (4) To have the properly documented records of a hospital or any person
35 authorized to prescribe controlled substances for the purpose of providing
36 medical or pharmaceutical care for their patients transmitted by any means



- 1 of communication in order to validate a pharmacy record with respect to a
2 prescription or refill for a controlled substance or narcotic drug.
- 3 (5) To have a projection of an overpayment or underpayment based on either the
4 number of patients served with a similar diagnosis or the number of similar
5 prescription orders or refills for similar drugs. This subdivision does not
6 prohibit recoupments of actual overpayments, unless the projection for
7 overpayment or underpayment is part of a settlement by the pharmacy.
- 8 (6) Prior to the initiation of an audit, if the audit is conducted for an identified
9 problem, the audit is limited to claims that are identified by prescription
10 number.
- 11 (7) If an audit is conducted for a reason other than described in subdivision (6)
12 of this subsection, the audit is limited to 40 selected prescriptions.
- 13 (8) If an audit reveals the necessity for a review of additional claims, to have the
14 audit conducted on site.
- 15 (9) Except for audits initiated for the reason described in subdivision (6) of this
16 subsection, to be subject to no more than one audit in one calendar year.
- 17 (10) Except for cases of Food and Drug Administration regulation or drug
18 manufacturer safety programs, to be free of recoupments based on any of the
19 following:
- 20 a. Documentation requirements in addition to or exceeding
21 requirements for creating or maintaining documentation prescribed
22 by the State Board of Pharmacy.
- 23 b. A requirement that a pharmacy or pharmacist perform a professional
24 duty in addition to or exceeding professional duties prescribed by the
25 State Board of Pharmacy.
- 26 (11) To be subject to recoupment only following the correction of a claim and to
27 have recoupment limited to amounts paid in excess of amounts payable
28 under the corrected claim.
- 29 (12) Except for Medicare claims, to be subject to reversals of approval for drug,
30 prescriber, or patient eligibility upon adjudication of a claim only in cases in
31 which the pharmacy obtained the adjudication by fraud or misrepresentation
32 of claim elements.
- 33 (13) To be audited under the same standards and parameters as other similarly
34 situated pharmacies audited by the same entity.
- 35 (14) To have at least 30 days following receipt of the preliminary audit report to
36 produce documentation to address any discrepancy found during an audit.
- 37 (15) To have the period covered by an audit limited to 24 months from the date a
38 claim was submitted to, or adjudicated by, a managed care company, an
39 insurance company, a third-party payer, or any entity that represents
40 responsible parties, unless a longer period is permitted by a federal plan
41 under federal law.
- 42 (16) Not to be subject to the initiation or scheduling of audits during the first five
43 calendar days of any month due to the high volume of prescriptions filled
44 during that time, without the express consent of the pharmacy. The
45 pharmacy shall cooperate with the auditor to establish an alternate date
46 should the audit fall within the days excluded.
- 47 (17) To have the preliminary audit report delivered to the pharmacy within 120
48 days after conclusion of the audit.
- 49 (18) To have a final audit report delivered to the pharmacy within 90 days after
50 the end of the appeals period, as provided for in G.S. 90-85.51.

1 (19) Not to have the accounting practice of extrapolation used in calculating
2 recoupments or penalties for audits, unless otherwise required by federal
3 requirements or federal plans.

4 **"§ 90-85.51. Mandatory appeals process.**

5 (a) Each entity that conducts an audit of a pharmacy shall establish an appeals process
6 under which a pharmacy may appeal an unfavorable preliminary audit report to the entity.

7 (b) If, following the appeal, the entity finds that an unfavorable audit report or any
8 portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the audit
9 report or the unsubstantiated portion of the audit report without any further proceedings.

10 (c) Each entity conducting an audit shall provide a copy, if required under contractual
11 terms, of the audit findings to the plan sponsor after completion of any appeals process.

12 **"§ 90-85.52. Pharmacy audit recoupments.**

13 (a) Recoupments of any disputed funds shall occur only after final internal disposition
14 of an audit, including the appeals process as set forth in G.S. 90-85.51.

15 (b) Recoupment on an audit shall be refunded to the responsible party as contractually
16 agreed upon by the parties.

17 (c) The entity conducting the audit may charge or assess the responsible party, directly
18 or indirectly, based on amounts recouped if both of the following conditions are met:

19 (1) The responsible party and the entity conducting the audit have entered into a
20 contract that explicitly states the percentage charge or assessment to the
21 responsible party.

22 (2) A commission or other payment to an agent or employee of the entity
23 conducting the audit is not based, directly or indirectly, on amounts
24 recouped.

25 **"§ 90-85.53. Applicability.**

26 This Article does not apply to any audit, review, or investigation that involves alleged
27 Medicaid fraud, Medicaid abuse, insurance fraud, or other criminal fraud or misrepresentation."

28 **SECTION 2.** Notwithstanding 10A NCAC 22F .0402, a provider shall submit to
29 the Division of Medical Assistance a written request for a Reconsideration Review within 30
30 working days from the date of the receipt of notice of tentative decision. Failure to request a
31 Reconsideration Review in the specified time shall result in the implementation of the tentative
32 decision as the Division's final decision. Any provider who had received notice of a tentative
33 decision under 10A NCAC 22F .0402 on or after March 1, 2011, shall be eligible to resubmit a
34 written request for Reconsideration Review within 30 working days of this act becoming law.
35 The Department of Health and Human Services shall amend any rule in conflict with this
36 provision.

37 **SECTION 3.** Section 1 of this act becomes effective October 1, 2011, and applies
38 to audits of pharmacies conducted on or after that date. The remaining sections of this act are
39 effective when they become law.