F I S C A L I M P A C T R E P O R T

SPONSOR HBIC **ORIGINAL DATE** 2/12/07 **LAST UPDATED** **HB** 482/HBICS

SHORT TITLE Pharmacy Records Audit Process **SB**

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	**FY08**		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Department of Health (DOH)

SUMMARY

House Business and Industry Substitute for House Bill 482 adds a new section to NMSA 61-11 The Pharmacy Act. This new section provides for clarifying and codifying the process insurance providers, and other such entities, must comply with whenever auditing a pharmacy. Specifically the new section:

- Paragraph B (7) reduces the number of days, a pharmacy has to produce documentation addressing discrepancies in an audit, from sixty down to twenty-one but with reasonable extensions allowed.
- Paragraph B (8) increases the period covered by an audit from one to two years (unless otherwise provided by contractual agreement).
- Paragraph B (9) limits the initiation of an audit to after the first five calendar days of a month. This was the first seven calendar days in the original Bill.
- Paragraph B (10) adds "with reasonable extensions allowed" to the one hundred twenty days that an audit report must be delivered to the pharmacy.
- Paragraph C adds language that allows the withholding, pending finalization of the audit, of any future payments to the pharmacy if the identified discrepancy exceeds twenty-five thousand dollars.

- Paragraph D changes the ability to dismiss the audit report if the report of any portion of the audit is unsubstantiated to, allowing the report but dismissing the unsubstantiated portion.

The House Business and Industry Substitute 482 also requires:

- the pharmacy to be given a two-week notice prior to conducting the initial on-site audit,
- an audit involving clinical or professional judgment must be conducted by, or in consultation with, a pharmacist,
- the pharmacy to be able to utilize the records of a hospital or licensed practitioner for the purposes of verifying the pharmacy record for orders or refills for dangerous drugs or narcotics,
- the findings of over or underpayment shall not be a projection based on a formula but must be based on actual documented under or overpayment unless agreed upon by the pharmacy as a settlement,
- the audit be conducted by the entity using the same standards and parameters used on other audits conducted on similarly situated pharmacies,
- the audited pharmacy must be allowed at least sixty days to produce documentation in response to the preliminary audit report,
- limitation on the period covered by the audit (shall not exceed one year from the date the claim was submitted to, or adjudicated by, an entity),
- the preliminary audit report to be delivered to the pharmacy within 120 days after conclusion of an audit,
- the final report from the entity to be delivered to the pharmacy within 6 months after receipt of the preliminary audit report or final appeal,
- the entity not utilize the accounting practice of extrapolation in calculating recoupments or penalties for audits,
- recoupments of any disputed funds shall occur after the final disposition of the audit,
- entities to limit the time of an audit (after the first 7 days of each month),
- the entity to establish an appeals process for the pharmacy to utilize, and
- The entity to provide a final report of an audit to the plan sponsor.

FISCAL IMPLICATIONS

NFI

SIGNIFICANT ISSUES

Numerous states have adopted similar legislation in order to limit the unregulated authority insurance companies (payers) have when auditing pharmacies. This Bill is very similar to the Bill that passed and is in place in Georgia.

Entities have been known to interpret state or federal pharmacy, or drug, laws in their own best interest. This interpretation many times leads to audit results that are an estimation based on extrapolation of false claims. The entity many times will withhold adjudication of any further claims submitted by that pharmacy until the pharmacy reconciles with them.

TECHNICAL ISSUES

The House Business and Industry substitute language in paragraph C, allowing the withholding of future payments to the pharmacy whenever the discrepancy exceeds $25,000 may create cash flow problems for smaller pharmacies resulting in forced inventory reductions reducing the drug stock available for consumers.

Page 2 line 17 Narcotic drug is specific to opiates. The term should be changed to "controlled substance."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A structured format for a pharmacy records audit process conducted by an external entity would not be established.

CS/csd