AN ACT concerning pharmacy; creating the pharmacy audit integrity act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 6, and amendments thereto, shall be known and may be cited as the pharmacy audit integrity act.

Sec. 2. As used in this act, “pharmacy benefits manager” or “PBM” means a person, business or other entity that performs pharmacy benefits management. The term includes a person or entity acting for a PBM in contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, not-for-profit hospital or medical service organization, insurance company, third-party payor or health program administered by the state board of pharmacy.

Sec. 3. (a) The entity conducting the audit shall follow the following procedures:

(1) An entity conducting an on-site audit must give the pharmacy at least two weeks written notice before conducting an initial audit;

(2) an audit that involves clinical or professional judgment must be conducted by or in consultation with a pharmacist licensed in the state of the audit or the state board of pharmacy;

(3) the period covered by the audit may not exceed two years from the date that the claim was submitted to or adjudicated by the entity;

(4) the audit may not take place during the first seven days of the month due to the high volume of prescriptions filled during that time unless otherwise consented to by the pharmacy;

(5) the pharmacy may use the records of a hospital, physician or other authorized practitioner to validate the pharmacy record;

(6) any legal prescription, in compliance with the requirements of the state board of pharmacy, may be used to validate claims in connection with prescriptions, refills or changes in prescriptions;

(7) each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies; and

(8) the entity conducting the audit must establish a written appeals process. The appeals process shall include appeals of preliminary reports and final reports. If either party is not satisfied with the appeal, that party may seek mediation.

(b) The entity conducting the audit shall also comply with the
following requirements:

1. A finding of overpayment or underpayment must be based on the actual overpayment or underpayment and not a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs;

2. Calculations of overpayments shall not include dispensing fees;

3. The entity conducting the audit shall not use extrapolation in calculating the recoupments or penalties for audits;

4. The auditing company or agent may not receive payment based on a percentage of the amount recovered; and

5. Interest may not accrue during the audit period.

Sec. 4. (a) Any preliminary audit report must be delivered to the pharmacy within 60 days after the conclusion of the audit. Any pharmacy shall be allowed at least 30 days following receipt of the preliminary audit to provide documentation to address any discrepancy found in the audit. Any final audit report shall be delivered to the pharmacy within 90 days after receipt of the preliminary audit report or final appeal, whichever is later.

(b) No charge backs, recoupment or other penalties may be assessed until the appeal process has been exhausted and the final report issued. Unless otherwise required by the federal or state law, any audit information may not be shared. Auditors shall only have access to previous audit reports on a particular pharmacy conducted by that same entity.

Sec. 5. Any auditing entity must provide a copy of the final report, including the disclosure of any money recouped in the audit, to the plan sponsor and the state board of pharmacy.

Sec. 6. This act shall apply to contracts entered into, amended, extended or renewed on or after January 1, 2011. This act shall not apply to any investigative audit that involves allegations of fraud or willful misrepresentation.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.