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| PREVAILED | Roll Call No. _____ |
| FAILED | Ayes _____ |
| WITHDRAWN | Noes _____ |
| RULED OUT OF ORDER | |

# HOUSE MOTION ____

MR. SPEAKER:

I move that Engrossed Senate Bill 407 be amended to read as follows:

Page 3, after line 12, begin a new paragraph and insert:

"SECTION 3. IC 25-26-22-4.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 4.2. (a) A third party payer may cause an onsite audit to occur at a particular pharmacy location not more than one (1) time per calendar year.**

**(b) A company that conducts an audit for a third party payer may conduct an onsite audit at a particular pharmacy location not more than one (1) time per calendar year for each third party payer. However, if the audit results in a finding of a particular problem at the pharmacy, the auditor may return within the calendar year to determine ongoing compliance.**

SECTION 4. IC 25-26-22-5, AS ADDED BY P.L.7-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. An auditor conducting an audit shall comply with all of the following:

(1) The contract under which the audit is performed must provide a description of audit procedures that will be followed.

(2) For an onsite audit conducted at a pharmacy's location, the auditor that conducts the audit shall provide written notice to the pharmacy at least two (2) weeks before the initial onsite audit is performed for each audit cycle.

(3) The auditor shall not interfere with the delivery of pharmacist services to a patient and shall use every effort to minimize

inconvenience and disruption to pharmacy operations during the audit. This subdivision does not prohibit audits during normal business hours of the pharmacy.

(4) If the audit requires use of clinical or professional judgment, the audit must be conducted by or in consultation with a licensed pharmacist.

(5) The auditor shall allow the use of written or otherwise transmitted hospital, physician, or other health practitioner records to validate a pharmacy record with respect to a prescription for a legend drug.

(6) The auditor shall perform the audit according to the same standards and parameters that the auditor uses to audit all other similarly situated pharmacies on behalf of the third party payer.

(7) The period covered by the audit must not exceed twenty-four (24) months after the date on which the claim that is the subject of the audit was submitted to or adjudicated by the third party payer, and the pharmacy must be permitted to resubmit electronically any claims disputed by the audit. This subdivision does not limit the period for audits under the Medicaid program that are conducted due to a federal requirement.

(8) The audit must not be initiated or scheduled during the first ~~five (5)~~ **seven (7)** calendar days of any month without the voluntary consent of the pharmacy. The consent may not be mandated by a contract or any other means.

(9) Payment to the onsite auditor for conducting the audit must not be based on a percentage of any amount recovered as a result of the audit.

**(10) Within twenty-four (24) hours of receiving the notice of an audit, a pharmacy may reschedule the audit to a date not more than fourteen (14) days after the date proposed by the auditor. However, if the auditor is unable to reschedule within the fourteen (14) day period, the auditor shall select and reschedule the audit for a date after the fourteen (14) day period.**

**(11) This subdivision does not apply to an audit conducted by the Medicaid program. If a clerical error is identified by the auditor during the course of an audit, the auditor shall allow the pharmacy to obtain a prescription that corrects the clerical error from the prescribing physician. However, if the clerical error results in an overpayment to the pharmacy, the overpayment may be recouped by the third party payer.**

SECTION 5. IC 25-26-22-6, AS ADDED BY P.L.7-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. **(a) This section does not apply to an audit conducted by the Medicaid, Medicare, or any other federal program.**

**(b)** Following an audit, the auditor shall provide to the pharmacy written audit reports as follows:

(1) The auditor shall deliver a preliminary audit report to the pharmacy not later than ninety (90) days after the audit is concluded.

(2) The auditor shall provide with the preliminary audit report a written appeal procedure for the pharmacy to follow if the pharmacy desires to appeal a finding contained in the preliminary audit report. **The written appeal procedure must provide for a period of at least thirty (30) days after the pharmacy receives the preliminary audit report during which the pharmacy may file an appeal of findings contained in the preliminary audit report.**

(3) The auditor shall deliver a final audit report to the pharmacy not later than one hundred twenty (120) days after:

(A) the preliminary audit report is received by the pharmacy; or

(B) if an appeal is filed, a final appeal determination is made; whichever is later.

(4) Each audit report must be signed by the auditor and a pharmacist participating in the audit.

(5) The auditor shall provide a copy of the final audit report to the third party payer.

**(c) An audit report provided to a pharmacy under this section must be sent to the pharmacy by a means that allows signature confirmation, including an electronic signature (as defined by IC 25-26-13-2). If the audit report is sent by electronic mail, any other verification system may be used, provided that the receipt is acknowledged by the pharmacy.**

SECTION 6. IC 25-26-22-9, AS ADDED BY P.L.7-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. **(a) This section does not apply to an audit conducted by the Medicaid, Medicare, or any other federal program.**

~~(a) A final audit report must first be distributed~~ **(b)** Before recoupment of funds may be made based on an audit finding of overpayment or underpayment:

**(1) a final audit report must be distributed; and**

**(2) except when an audit finds that fraud, willful misrepresentation, or alleged serious abuse has occurred, at least thirty (30) days must elapse after the date on which the final audit report is distributed before the recoupment of funds exceeding ten thousand dollars ($10,000).**

~~(b) Except for audits conducted under the Medicaid program,~~ **(c)** Interest on funds described in subsection ~~(a)~~ **(b)** does not accrue during the audit period.".

1 Renumber all SECTIONS consecutively.
(Reference is to ESB 407 as printed February 24, 2012.)

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Representative Davisson