

HOUSE _____ AMENDMENT NO. ____

Offered By

1 AMEND Senate Bill No. 1068, Section A, Page 1, Lines 1-2 by inserting after all of said section
2 the following:

3 “338.600. 1. Notwithstanding any other provision of law to the contrary, when an audit of
4 the records of a pharmacy licensed in this state is conducted by a managed care company,
5 insurance company, third-party payor, the department of insurance, financial institutions and
6 professional registration, or any entity that represents such companies, groups, or department,
7 such audit shall be conducted in accordance with the following:

8 (1) The entity conducting the initial on-site audit shall provide the pharmacy with notice
9 at least one week prior to conducting the initial on-site audit for each audit cycle;

10 (2) Any audit which involves clinical judgment shall be conducted by or in consultation
11 with a licensed pharmacist;

12 (3) Any clerical or recordkeeping error, such as a typographical error, scriveners error, or
13 computer error, regarding a required document or record shall not in and of itself constitute fraud
14 or grounds for recoupment. No claim arising under this subdivision shall be subject to criminal
15 penalties without proof of intent to commit fraud;

16 (4) A pharmacy may use the records of a hospital, physician, or other authorized
17 practitioner of the healing arts involving drugs or medicinal supplies written or transmitted by any
18 means of communication for purposes of validating the pharmacy record with respect to orders or
19 refills of a legend or narcotic drug. Electronically stored images of prescriptions, electronically

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1 created annotations and other related supporting documentation shall be considered valid
2 prescription records. Hard copy and electronic signature logs that indicate the delivery of
3 pharmacy services shall be considered valid proof of receipt of such services by a program
4 enrollee;

5 (5) A finding of an overpayment or underpayment may be a projection based on the
6 number of patients served and having a similar diagnosis or on the number of similar orders or
7 refills for similar drugs; except that, recoupment of claims shall be based on the actual
8 overpayment or underpayment unless the projection for overpayment or underpayment is part of a
9 settlement as agreed to by the pharmacy;

10 (6) Each pharmacy shall be audited under the same standards and parameters as other
11 similarly situated pharmacies audited by the entity;

12 (7) A pharmacy shall be allowed at least thirty days following receipt of the preliminary
13 audit report in which to produce documentation to address any discrepancy found during an audit;

14 (8) The period covered by the audit shall not exceed a two-year period beginning two
15 years prior to the initial date of the on-site portion of the audit unless otherwise provided by
16 contractual agreement or if there has been a previous finding of fraud or as otherwise provided by
17 state or federal law;

18 (9) An audit shall not be initiated or scheduled during the first three business days of any
19 month due to the high volume of prescriptions filled during such time unless otherwise consented
20 to by the pharmacy;

21 (10) The preliminary audit report shall be delivered to the pharmacy within one hundred
22 twenty days after conclusion of the audit, with reasonable extensions permitted. A final audit
23 report shall be delivered to the pharmacy within six months of receipt by the pharmacy of the
24 preliminary audit report or final appeal, as provided for in subsection 3 of this section, whichever
25 is later;

26 (11) Notwithstanding any other provision in this subsection, the entity conducting the
27 audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties
28 for audits, except as otherwise authorized under subdivision (5) of this subsection.

29 2. Recoupments of any disputed moneys shall only occur after final internal disposition of

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1 the audit, including the appeals process set forth in subsection 3 of this section. Should the
2 identified discrepancy for an individual audit exceed twenty five thousand dollars, future
3 payments to the pharmacy in excess of twenty five thousand dollars may be withheld pending
4 finalization of the audit.

5 3. Each entity conducting an audit shall establish an appeals process, lasting no longer
6 than six months, under which a licensed pharmacy may appeal an unfavorable preliminary audit
7 report to the entity. If, following such appeal, the entity finds that an unfavorable audit report or
8 any portion thereof is unsubstantiated, the entity shall dismiss the audit report or such portion
9 without the necessity of any further proceedings.

10 4. Each entity conducting an audit shall provide a copy of the final audit report, after
11 completion of any appeal process, to the plan sponsor.

12 5. This section shall not apply to any audit conducted as a part of an investigation
13 regarding alleged criminal wrongdoing, willful misrepresentation, or abuse.

14 6. This section shall not apply to any audit conducted as part of any inspection or
15 investigation conducted by the board of pharmacy.”; and

16
17 Further amend said bill by amending the title, enacting clause, and intersectional references
18 accordingly.

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