

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 44

H.P. 39

House of Representatives, January 17, 2013

An Act Regarding Pharmacy Provider Audits

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BECK of Waterville.
Cosponsored by Senator LACHOWICZ of Kennebec and
Representatives: KUSIAK of Fairfield, McCABE of Skowhegan, NADEAU of Winslow,
NUTTING of Oakland, Senator: WHITTEMORE of Somerset.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §4317, sub-§10, ¶¶F to M** are enacted to read:

3 F. The auditor may recoup only the dispensing fee in the calculation of an
4 overpayment unless the prescription is considered a misfill.

5 G. The auditor may not recoup funds for a clerical or record-keeping error in a
6 prescription, which includes a typographical error, scrivener's error or computer error
7 on a required document or record.

8 H. The auditor may not collect any funds, charge-backs or penalties until the audit is
9 complete and all appeals by the pharmacy are exhausted and final.

10 I. Except as required for compliance with state or federal law, an auditor may have
11 access to previous audit reports on a pharmacy only if the previous audit was
12 conducted by the same auditor.

13 J. A pharmacy subject to an audit may use the following records to validate a claim
14 for a prescription, refill or change in a prescription:

15 (1) Electronic or physical copies of records of a health care facility or a health
16 care provider with prescribing authority; and

17 (2) Any prescription that complies with state law.

18 K. The auditor may not audit claims submitted more than 12 months prior to the
19 audit, unless required by federal law.

20 L. Prior to an audit the auditor must give the pharmacy 10 days' advance written
21 notice of the audit and the range of prescription numbers or the range of dates
22 included in the audit.

23 M. To preserve the neutrality of an audit, the auditor must use a fair and
24 representative sample of random pharmacy transactions in an audit. Product selection
25 and cost may not be used to influence which products the auditor chooses to audit.

26 **SUMMARY**

27 This bill limits the total amount that may be recouped in pharmacy audits to
28 dispensing fees, unless a misfill occurs. The bill prohibits collection of amounts due as a
29 result of an audit until the audit is complete and appeals are exhausted, unless there is
30 evidence of pharmacy fraud or intentional or willful misrepresentation. The bill also
31 limits access by pharmacy auditors to certain records, requires auditors to give advance
32 notice of an audit and requires the random sampling of pharmacy transactions.