



**State of Tennessee**  
**PUBLIC CHAPTER NO. 408**

**SENATE BILL NO. 63**

**By Yager, Haile**

Substituted for: House Bill No. 228

By Sanderson, Sexton, Shepard, Odom, Stewart

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 56, Chapter 7, Part 31, relative to pharmacy benefit contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 10, is amended by adding the following language as a new section:

(a) The department of finance and administration shall monitor, and cause to be audited by its qualified independent auditor, the pharmacy benefits manager's compliance with any state pharmacy benefits management contract. The commissioner of finance and administration, or the commissioner's designee, shall report, by July 1st of each year, on the pharmacy benefits manager's contract compliance to the speaker of the senate, the speaker of the house of representatives and the fiscal review committee.

(b) In order to comply with subsection (a), the department shall, after one (1) year of entering into or renewing any state pharmacy benefits management contract, annually perform a single risk assessment to determine those areas of the contracts that pose the greatest risk of noncompliance, fraud, waste and abuse. Upon completion of the risk assessment, the department shall incorporate the results of the risk assessment into its audit and monitoring plan. The department shall update the risk assessment when contract amendments result in additional risks of noncompliance, fraud, waste, or abuse. The department shall consult with the office of the comptroller of the treasury in determining the scope and extent of the audit and monitoring plan procedures. The department may submit the updated audit and monitoring plan, along with any audit or monitoring findings, to comply with the reporting requirement in subsection (a).

(c) The audit and monitoring plan shall address all state pharmacy benefits management contracts and be designed to examine source documentation whenever such documentation is available. The plan shall include, but not be limited to, a review of:

- (1) Repricing of pharmacy claims at the drug level;
- (2) Validation of the national drug code (NDC) usage;
- (3) Appropriateness of the nationally recognized reference prices, or average wholesale price (AWP), in accordance with § 56-7-3104;
- (4) Eligibility of beneficiaries for pharmacy claims paid;
- (5) For pharmacy benefits contracts entered into or renewed on or after July 1, 2013, reconciliation of the pharmacy benefits manager's payments to pharmacies with the state's reimbursement to the pharmacy benefits manager;
- (6) Confirmation that the pharmacy benefits manager's payments to pharmacies do not reflect disparity among network pharmacies attributable to preferential treatment of one (1) or more pharmacies;
- (7) Recalculation of discount and dispensing fee guarantees;
- (8) Review of the state's claim utilization to ensure that per claim rebate guarantees were accurately calculated by the pharmacy benefits manager;

(9) Review of rebate contracts between the pharmacy benefits manager and five (5) drug manufacturers, to be selected by the benefits administration division of the department, and the contracted auditor to ensure that eligible rebate utilization was accurately invoiced on behalf of the state;

(10) Comparison of total rebates collected by the PBM (pass-through rebates) to the minimum rebate guarantees (per claim rebates) to ensure that annual reconciliation of rebate payments to the state represented the greater of the two (2) amounts;

(11) Monitor the activities of the pharmacy benefits manager to ensure that the contractor is conducting audits and other reviews of pharmacies as provided in the contractor's scope of services; and

(12) Consideration of other industry related risks to reduce the risk of financial losses due to fraud, waste and abuse.

(d) The department shall seek appropriate remedies for contract noncompliance and occurrences of fraud, waste or abuse that are discovered through monitoring or audits.

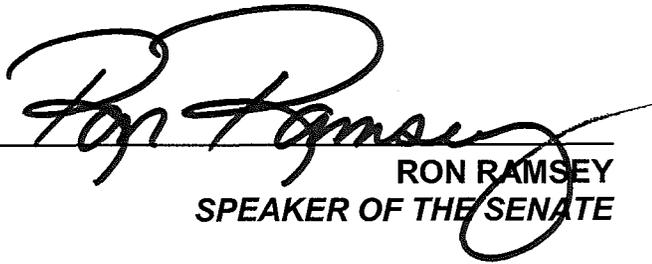
(e) The department shall have the authority to contract with a qualified independent auditor experienced in conducting pharmacy audits for auditing the pharmacy benefits manager's compliance with the contract. No contracted qualified independent auditor shall subcontract any part of the plan described in this section without the express written approval by the commissioner, or the commissioner's designee, and notification in writing to the comptroller of the treasury.

(f) This section shall apply to any state or local health insurance plan established under title 8, chapter 27.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 63

PASSED: April 16, 2013

  
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RON RAMSEY  
SPEAKER OF THE SENATE

  
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BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 14<sup>th</sup> day of May 2013

  
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BILL HASLAM, GOVERNOR