

## 2022 South Dakota Legislature

**Senate Bill 163****AMENDMENT 163A FOR THE INTRODUCED BILL**1 **An Act to address transparency in prescription drug pricing.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 58-29E-1 be AMENDED:**4 **58-29E-1.** Terms used in this chapter mean:

- 5 (1) ~~"Covered entity," a nonprofit hospital or medical service corporation, health insurer,~~  
6 ~~health benefit plan, or health maintenance organization; a health program~~  
7 ~~administered by a department or the state in the capacity of provider of health~~  
8 ~~coverage; or an employer, labor union, or other group of persons organized in the~~  
9 ~~state that provides health coverage to covered individuals who are employed or~~  
10 ~~reside in the state. The term does not include a self-funded plan that is exempt~~  
11 ~~from state regulation pursuant to ERISA, a plan issued for coverage for federal~~  
12 ~~employees, or a health plan that provides coverage only for accidental injury,~~  
13 ~~specified disease, hospital indemnity, medicare supplement, disability income,~~  
14 ~~long-term care, or other limited benefit health insurance policies and contracts;~~  
15 (2) "Covered individual," a member, participant, enrollee, contract holder, policy  
16 holder, or beneficiary of a covered entity third-party payor who is provided health  
17 coverage by the covered entity third-party payor. The term includes a dependent  
18 or other person provided health coverage through a policy, contract, or plan for a  
19 covered individual;
- 20 (2) "Director," the director of the Division of Insurance;
- 21 (3) "Generic drug," a chemically equivalent copy of a brand-name drug with an expired  
22 patent;
- 23 (4) "Labeler," an entity or person that receives prescription drugs from a manufacturer  
24 or wholesaler and repackages those drugs for later retail sale and that has a labeler  
25 code from the federal Food and Drug Administration under 21 C.F.R. § 270.20  
26 (1999);

- 1        ~~(6)~~(5) "Maximum allowable cost list," any listing of pharmaceutical products, or method  
2        for calculating reimbursement amounts, used by a pharmacy benefit manager,  
3        directly or indirectly, to establish the maximum allowable cost on which  
4        reimbursement payment, to a pharmacy or pharmacist, may be based for  
5        dispensing a prescription pharmaceutical product, including:  
6        (a) Average acquisition cost;  
7        (b) Average manufacturer price;  
8        (c) Average wholesale price;  
9        (d) Brand effective rate or generic effective rate;  
10       (e) Discount indexing;  
11       (f) Federal upper limits;  
12       (g) National average drug acquisition cost;  
13       (h) Wholesale acquisition cost; and  
14       (i) Any other factor used by a pharmacy benefit manager or a third-party payor  
15       to establish reimbursement rates to a pharmacy or pharmacist for  
16       pharmaceutical products;  
17       (6) "National Drug Code," a unique, three-segment numeric identifier assigned to each  
18       medication in accordance with the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.  
19       § 360 (as of January 1, 2022);  
20       (7) "Pharmaceutical product," a generic drug, brand-name drug, biologic, or other  
21       prescription drug, vaccine, or device;  
22       (8) "Pharmaceutical wholesaler," a person who:  
23       (a) Sells and distributes, directly or indirectly, pharmaceutical products and  
24       over-the-counter pharmaceuticals; and  
25       (b) Offers regular or private delivery to a pharmacy;  
26       (9) "Pharmacy acquisition cost," the amount that a pharmaceutical wholesaler charges  
27       for a pharmaceutical product, as listed on the pharmacy's billing invoice;  
28       (10) "Pharmacy ~~benefits~~-benefit management," the procurement of prescription drugs at  
29       a negotiated rate for dispensation within this state to ~~covered~~-individuals, the  
30       administration or management of prescription drug benefits provided by a ~~covered~~  
31       entity ~~third-party payor~~ for the benefit of ~~covered~~-individuals, or any of the  
32       following services provided with regard to the administration of the following  
33       pharmacy benefits:  
34       (a) Mail service pharmacy;

- 1 (b) Claims processing, retail network management, and payment of claims to  
 2 pharmacies for prescription drugs dispensed to covered individuals;  
 3 (c) Clinical formulary development and management services;  
 4 (d) Rebate contracting and administration;  
 5 (e) Certain patient compliance, therapeutic intervention, and generic substitution  
 6 programs; and  
 7 (f) Disease management programs involving prescription drug utilization;

8 ~~(7)~~(11) "Pharmacy ~~benefits~~benefit manager," ~~an entity that~~a person who performs  
 9 pharmacy ~~benefits~~benefit management. ~~The term includes a:~~

10 ~~(a) A person or entity acting for a pharmacy benefits benefit manager, in a~~  
 11 ~~contractual or employment relationship, in the performance of pharmacy~~  
 12 ~~benefits benefit management for a covered entity and includes~~  
 13 ~~mail~~third party payor; and

14 ~~(b) A mail service pharmacy.~~

15 The term does not include a health carrier licensed pursuant to Title 58 when, if  
 16 the health carrier or its subsidiary is providing pharmacy benefits management to  
 17 its own insureds; or a public self-funded pool or a private single employer  
 18 self-funded plan that provides such benefits or services directly to its beneficiaries  
 19 ~~for a third party payor;~~

20 ~~(8)~~(12) "Pharmacy benefit manager affiliate," a pharmacy that or a pharmacist who,  
 21 directly or indirectly, through one or more intermediaries:

22 (a) Owns or controls a pharmacy benefit manager;

23 (b) Is owned or controlled by a pharmacy benefit manager; or

24 (c) Is under common ownership or control with a pharmacy benefit manager;

25 (13) "Pharmacy benefit plan or program," a plan or program that pays for, reimburses,  
 26 covers the cost of, or otherwise provides for pharmaceutical products to individuals  
 27 who reside in, or are employed in, this state;

28 (14) "Pharmacy service administrative organization," an organization that has the  
 29 authority to contract with a pharmacy benefit manager on behalf of multiple  
 30 independently owned pharmacies;

31 (15) "Proprietary information," information on pricing, costs, revenue, taxes, market  
 32 share, negotiating strategies, customers, and personnel held by private entities  
 33 and used for that private entity's business purposes;

34 ~~(9)~~(16) "Third-party payor," any person involved in the financing of a pharmacy benefit  
 35 plan or program, other than:

- 1           (a) The patient;  
 2           (b) A health care provider; ~~or~~  
 3           (c) The sponsor of a plan that is subject to regulation under Medicare Part D,  
 4                 42 U.S.C. § 1395w-101, et seq., as of January 1, 2022; ~~or~~  
 5           (d) A plan administered by South Dakota Medicaid;  
 6       (17) "Trade secret," information, including a formula, pattern, compilation, program,  
 7           device, method, technique, or process, that:  
 8           (a) Derives independent economic value, actual or potential, from not being  
 9                 generally known to, and not being readily ascertainable by proper means  
 10                 by, other persons who can obtain economic value from its disclosure or use;  
 11                 and  
 12           (b) Is the subject of efforts that are reasonable under the circumstances to  
 13                 maintain its secrecy; and  
 14       (18) "340B entity," an entity participating in the federal drug discount program, as  
 15           described in section 340B of the Public Health Service Act, 42 U.S.C. § 256b, as of  
 16           January 1, 2022.

17       **Section 2. That § 58-29E-3 be AMENDED:**

18                 **58-29E-3.** Each pharmacy ~~benefits~~benefit manager shall perform its duties  
 19           exercising good faith and fair dealing toward the ~~covered entity~~third-party payor.

20       **Section 3. That chapter 58-29E be amended with a NEW SECTION:**

21           Before a pharmaceutical benefit manager places or provides for the continued  
 22           placement of a pharmaceutical product on a maximum allowable cost list, the  
 23           pharmaceutical benefit manager shall ensure that:

- 24       (1) The product:  
 25           (a) Is listed as therapeutically equivalent and pharmaceutically equivalent A-  
 26                 or B-rated in the United States Food and Drug Administration's most recent  
 27                 edition of Approved Drug Products with Therapeutic Equivalence Evaluations  
 28                 or on the United States Food and Drug Administration's most recent list of  
 29                 approved animal drug products; or  
 30           (b) Has an NR rating, an NA rating, or a similar rating by a nationally recognized  
 31                 drug compendia provider;  
 32       (2) The product is available for purchase by any pharmacy in this state, from national  
 33           or regional wholesalers operating in this state; and

- 1       (3) The product is not obsolete.  
2               For purposes of this section, the term, NR, means not rated, and the term, NA,  
3       means not available.

4       **Section 4. That chapter 58-29E be amended with a NEW SECTION:**

- 5               A pharmacy benefit manager shall:  
6       (1) Provide each pharmacy that is subject to the maximum allowable cost list with  
7               notification of any changes to the list;  
8       (2) Provide each pharmacy that is subject to the maximum allowable cost list with  
9               access to the list; and  
10      (3) Update the maximum allowable cost list within seven calendar days if:  
11              (a) Pharmacy acquisition costs from at least sixty percent of the pharmaceutical  
12              wholesalers doing business in the state increase by ten percent or more  
13              over the previously listed cost;  
14              (b) There is a change in the methodology on which the maximum allowable cost  
15              list is based; or  
16              (c) There is a change in the value of a variable involved in the methodology.

17      **Section 5. That chapter 58-29E be amended with a NEW SECTION:**

- 18              A pharmacy benefit manager shall establish an administrative procedure by which  
19      a pharmacy may appeal determinations regarding the maximum allowable costs and  
20      reimbursements for a specific pharmaceutical product as:  
21      (1) Not meeting the requirements set forth in this chapter; or  
22      (2) Being below the pharmacy acquisition cost.

23      **Section 6. That chapter 58-29E be amended with a NEW SECTION:**

- 24              The administrative procedure required under section 5 of this Act must:  
25      (1) Provide a telephone number, email address, and website, for initiating an appeal;  
26      (2) Provide that an appeal may be filed directly with the pharmacy benefit manger or  
27              through a pharmacy service administrative organization; and  
28      (3) Establish a period within which any appeal is to be filed, provided the period is at  
29              least seven days.

30      **Section 7. That chapter 58-29E be amended with a NEW SECTION:**

1 If an appeal is filed in accordance with the administrative procedure set forth in  
2 section 5 of this Act, the pharmacy benefit manager shall, within seven days of receipt:

3 (1) Find that the appeal is merited and:

4 (a) Make the change in the maximum allowable cost;

5 (b) Permit the appealing pharmacy or pharmacist to reverse and re-bill the  
6 claim in question;

7 (c) Provide to the pharmacy or pharmacist the National Drug Code on which  
8 the change is based; and

9 (d) Ensure that the change made under this subsection is effective for each  
10 similarly situated pharmacy, as defined by the payor, subject to the  
11 maximum allowable cost list; or

12 (2) Find that the appeal is not merited and provide to the appealing pharmacy or  
13 pharmacist the National Drug Code and the name of the national or regional  
14 pharmaceutical wholesalers who are operating in this state and have the drug in  
15 stock at a price below that on the maximum allowable cost list.

16 If the National Drug Code provided by the pharmacy benefit manager is not  
17 available below the pharmacy acquisition cost of the pharmaceutical wholesaler from  
18 whom the pharmacy or pharmacist purchases the majority of prescription drugs for resale,  
19 the pharmacy benefit manager shall adjust the maximum allowable cost, as listed on the  
20 maximum allowable cost list, above the appealing pharmacy's acquisition cost and permit  
21 the appealing pharmacy to reverse and re-bill each claim affected by the inability to  
22 procure the drug at a cost that is equal to or less than the previously appealed maximum  
23 allowable cost.

24 **Section 8. That chapter 58-29E be amended with a NEW SECTION:**

25 A pharmacy benefit manager may not reimburse a pharmacy or pharmacist in the  
26 state an amount less than the amount that the pharmacy benefit manager reimburses a  
27 pharmacy benefit manager affiliate for providing the same pharmacist services.

28 The amount must be calculated on a per-unit basis, using the same generic product  
29 identifier or generic code number.

30 **Section 9. That chapter 58-29E be amended with a NEW SECTION:**

31 A pharmacy or pharmacist may decline to provide a pharmaceutical product to a  
32 patient or pharmacy benefit manager if, as a result of a maximum allowable cost list, a

1 pharmacy or pharmacist is to be paid less than the pharmacy acquisition cost of the  
2 pharmacy providing the pharmaceutical product.

3

4 **~~Section 10. That chapter 58-29E be amended with a NEW SECTION:~~**

5 ~~A pharmacy benefit manager shall pay a pharmacy a professional dispensing fee at a rate not~~  
6 ~~less than that paid in accordance with the current South Dakota Medicaid pharmacy~~  
7 ~~dispensing fee schedule, for each prescription pharmaceutical product that is dispensed to the~~  
8 ~~patient, by the pharmacy, on a per unit basis, based on the same generic product identifier~~  
9 ~~or generic code number.~~

10 ~~The dispensing fee must be in addition to any amount that the pharmacy benefit manager~~  
11 ~~reimburses a pharmacy, consistent with this chapter, for the cost of the pharmaceutical~~  
12 ~~product dispensed to the patient.~~

13 **Section 10. That chapter 58-29E be amended with a NEW SECTION:**

14 A pharmacy benefit manager may not:

15 (1) Assess, charge, or collect any form of remuneration or fees from a pharmacy or  
16 pharmacist, including brand effective rate fees, claim processing fees,  
17 credentialling fees, dispensing fee effective rate fees, generic effective rate fees,  
18 network participation fees, and performance-based fees; or

19 (2) Directly or indirectly deny or reduce a claim after the claim has been adjudicated,  
20 unless:

21 (a) The original claim was submitted fraudulently; or

22 (b) The original claim payment was incorrect because the pharmacy or  
23 pharmacist had already been paid for the pharmaceutical product.

24 **Section 11. That chapter 58-29E be amended with a NEW SECTION:**

25 A pharmacy benefit manager may not:

26 (1) Take any action that prevents a 340B entity from dispensing drugs purchased  
27 under section 340B of the Public Health Service Act, 42 U.S.C. § 256b, as of  
28 January 1, 2022, to patients of the 340B entity;

29 (2) Refuse to contract with a 340B entity or impose on a 340B entity any contracting  
30 standards that differ from those imposed on a non-340B entity;

1 (3) By contract, provider manual, or any other means:

2 (a) Modify the definition of a pharmacy, as set forth in chapter 36-11;

3 (b) Provide a lower reimbursement for a drug purchased under section 340B  
 4 than that provided for the same drug if purchased by a non-340B entity  
 5 pharmacy in the same class of trade;

6 (c) Impose, on a 340B entity, any fee, chargeback, financial or other  
 7 adjustment, or claims-related information, which is not imposed, in the  
 8 same manner, on a non-340B entity;

9 (d) Prevent or otherwise interfere with the ability of covered individuals to  
 10 receive drugs from a 340B entity of the individual's choice, including  
 11 through mail order pharmacy services; or

12 (e) Require or compel the submission of ingredient costs, pricing data, or any  
 13 other data pertaining to drugs purchased under section 340B.

14 **Section 12. That § 58-29E-4 be AMENDED:**

15 **58-29E-4.** A ~~covered entity~~third-party payor may request that any pharmacy  
 16 ~~benefits-benefit manager~~ with which it has a pharmacy ~~benefits-benefit management~~  
 17 ~~services contract~~ disclose to ~~the covered entity~~ it, the amount of all rebate revenues and  
 18 the nature, type, and amounts of all other revenues that the pharmacy ~~benefits-benefit~~  
 19 manager receives from each pharmaceutical manufacturer or labeler with whom the  
 20 pharmacy ~~benefits-benefit manager~~ has a contract. The pharmacy ~~benefits-benefit~~  
 21 manager shall disclose in writing:

22 (1) The aggregate amount, and for a list of drugs to be specified in the contract, the  
 23 specific amount, of all rebates and other retrospective utilization discounts received  
 24 by the pharmacy ~~benefits-benefit manager~~, directly or indirectly, from each  
 25 pharmaceutical manufacturer or labeler ~~that~~, which are earned in connection with  
 26 the dispensing of prescription drugs to covered individuals of the health benefit  
 27 plans issued by the ~~covered entity~~ third-party payor, or for which the ~~covered entity~~  
 28 third-party payor is the designated administrator;

29 (2) The nature, type, and amount of all other revenue received by the pharmacy  
 30 ~~benefits-benefit manager~~, directly or indirectly, from each pharmaceutical  
 31 manufacturer or labeler for any other products or services provided to the  
 32 pharmaceutical manufacturer or labeler by the pharmacy ~~benefits-benefit manager~~,  
 33 with respect to programs that the ~~covered entity~~ third-party payor offers or  
 34 provides to its enrollees; and



1 (3) Any prescription drug utilization information requested by the ~~covered entity~~ third-  
2 party payor, relating to covered individuals.

3 A pharmacy ~~benefits~~ benefit manager shall provide ~~such~~ the information requested  
4 by the ~~covered entity~~ third-party payor for ~~such~~ disclosure within thirty days of receipt of  
5 the request. If requested, the information shall ~~must~~ be provided no less than once each  
6 year. The contract entered into between the pharmacy ~~benefits~~ benefit manager and the  
7 ~~covered entity~~ third-party payor must set forth any fees to be charged for drug  
8 utilization reports requested by the ~~covered entity~~ third-party payor.

9 **Section 13. That § 58-29E-5 be AMENDED:**

10 **58-29E-5.** A pharmacy benefits manager, unless authorized pursuant to the terms  
11 of its contract with a ~~covered entity~~ third-party payor, may not contact any covered  
12 individual without express written permission of the ~~covered entity~~ third-party payor.

13 **Section 14. That § 58-29E-6 be AMENDED:**

14 **58-29E-6.** Except for utilization information, a ~~covered entity~~ third-party payor  
15 shall maintain any information disclosed in response to a request pursuant to § 58-29E-4  
16 as confidential and proprietary information, and may not use such information for any  
17 other purpose, or disclose ~~such~~ that information to any other person, except as provided  
18 in this chapter, or in the pharmacy ~~benefits~~ benefit management services contract  
19 between the parties. ~~Any covered entity who~~

20 A third-party payor that discloses information in violation of this section is subject  
21 to an action for injunctive relief and is liable for any damages ~~which~~ that are the direct  
22 and proximate result of ~~such~~ the disclosure.

23 Nothing in this section prohibits a ~~covered entity~~ third-party payor from disclosing  
24 confidential or proprietary information to the director, upon request. Any ~~such~~ information  
25 obtained by the director is confidential and privileged and is not open to public inspection  
26 or disclosure.

27 **Section 15. That § 58-29E-7 be AMENDED:**

28 **58-29E-7.** ~~The covered entity~~ A third-party payor may have the pharmacy ~~benefits~~  
29 benefit manager's books and records related to the rebates or other information described  
30 in ~~subdivisions 58-29E-4(1), (2), and (3)~~ § 58-29E-4, to the extent the information relates  
31 directly or indirectly to ~~such covered entity's~~ the third-party payor's contract, audited in

1 accordance with the terms of the pharmacy ~~benefits~~benefit management services contract  
2 between the parties. ~~However, if~~ If the parties have not expressly provided for audit rights  
3 and the pharmacy ~~benefits~~benefit manager has advised the ~~covered entity~~third-party  
4 payor that other reasonable options are available and subject to negotiation, the ~~covered~~  
5 ~~entity~~third-party payor may have ~~such~~the books and records audited as follows:

- 6 (1) ~~Such~~The audits may be conducted no more frequently than once in each  
7 twelve-month period, upon ~~not less than~~at least thirty business days' written notice  
8 to the pharmacy ~~benefits~~benefit manager;
- 9 (2) The ~~covered entity~~third-party payor may select an independent firm to conduct  
10 ~~such~~the audit, and ~~such~~The independent firm shall sign a confidentiality  
11 agreement with the ~~covered entity~~third-party payor and the pharmacy ~~benefits~~benefit  
12 manager, ensuring that all information obtained during ~~such~~the audit will  
13 be treated as confidential. The firm may not use, disclose, or otherwise reveal any  
14 ~~such of the~~information, in any manner or form, to any person ~~or entity~~, except as  
15 otherwise permitted under the confidentiality agreement. The ~~covered entity~~third-  
16 party payor shall treat all information obtained as a result of the audit as  
17 confidential, and may not use or disclose ~~such that~~information, except as ~~may be~~  
18 ~~otherwise permitted~~ under the terms of the contract between the ~~covered entity~~  
19 third-party payor and the pharmacy ~~benefits~~benefit manager, or if ordered by a  
20 court of competent jurisdiction, for good cause shown;
- 21 (3) ~~Any such~~An audit shall ~~under this section must~~ be conducted at the pharmacy  
22 ~~benefits~~benefit manager's office where ~~such~~the records are located, during normal  
23 business hours, without undue interference with the pharmacy ~~benefits~~benefit  
24 manager's business activities, and in accordance with reasonable audit procedures.

25 **Section 16. That § 58-29E-8 be AMENDED:**

26 **58-29E-8.** With regard to the dispensation of a substitute prescription drug for a  
27 prescribed drug to a covered individual, when the pharmacy ~~benefits~~benefit manager  
28 requests a substitution, the following provisions apply:

- 29 (1) The pharmacy ~~benefits~~benefit manager may request the substitution of a  
30 lower- priced generic and therapeutically equivalent drug for a higher-priced  
31 prescribed drug;
- 32 (2) With regard to substitutions in which the substitute drug's net cost is more for the  
33 covered individual or the ~~covered entity~~third-party payor than the prescribed drug,  
34 the substitution must be made only for medical reasons that benefit the covered

1 individual. If a substitution is being requested pursuant to this subdivision, the  
2 pharmacy ~~benefits~~benefit manager shall obtain the approval of the prescribing  
3 health professional.

4 Nothing in this section permits the substitution of an equivalent drug product  
5 contrary to § 36-11-46.2

6 **Section 17. That § 58-29E-8.1 be AMENDED:**

7 **58-29E-8.1.** A pharmacy ~~benefits~~benefit manager may ~~neither prohibit nor not~~  
8 restrict or penalize a pharmacy or pharmacist or pharmacy for providing cost-sharing  
9 information on the amount a covered individual may pay for a particular prescription drug  
10 for informing a patient about:

11 (1) The cost of a prescription pharmaceutical product;

12 (2) The amount of reimbursement that the pharmacy will receive for dispensing the  
13 prescription pharmaceutical product;

14 (3) The cost and clinical efficacy of a more affordable alternative pharmaceutical  
15 product, if one is available; or

16 (4) Any differential between the amount the patient would pay under the patient's  
17 prescription benefit plan or program and a lower price the patient would pay for  
18 the prescription pharmaceutical product, if the patient obtained the pharmaceutical  
19 product without making a claim for benefits on the patient's prescription benefit  
20 plan or program.

21 **Section 18. That § 58-29E-9 be AMENDED:**

22 **58-29E-9.** The Division of Insurance shall promulgate rules, pursuant to chapter  
23 1-26, to carry out the issuance of the license required by § 58-29E-2 and the enforcement  
24 provisions of this chapter. The rules ~~may~~must include the following:

25 (1) Definition of terms;

26 (2) Use of prescribed forms;

27 (3) Reporting requirements;

28 (4) Enforcement procedures; and

29 (5) Protection of proprietary information and trade secrets.

30 **Section 19. That § 58-29E-10 be AMENDED:**

1           **58-29E-10.** Any ~~covered entity~~ third-party payor may bring a civil action to  
2           enforce the ~~provisions of this chapter~~ or to seek civil damages for ~~the a~~ violation of its  
3           ~~provisions~~ this chapter.

4           **Section 20. That § 58-29E-11 be AMENDED:**

5           **58-29E-11.** ~~The provisions of~~ Except as otherwise provided in this section, this  
6           chapter ~~apply~~ applies only to pharmacy ~~benefits~~ benefit management services contracts  
7           entered into or renewed after June 30, 2004.

8           Sections 3 to ~~11~~10, inclusive, of this Act, apply only to pharmacy benefit  
9           management service contracts entered into or renewed after June 30, 2022.

10          **Section 21. That § 58-29E-12 be AMENDED:**

11          **58-29E-12.** ~~No~~ A pharmacy benefit manager ~~shall~~ may not contractually require  
12          a pharmacy, who is a participating provider in a health plan provided by a ~~covered~~  
13          ~~entity~~ third-party payor, to charge or collect, from an insured, a cost share for a  
14          prescription or pharmacy service that exceeds the amount retained, by the pharmacist or  
15          pharmacy, from all payment sources, for the filling of the prescription or providing the  
16          pharmacy service.

17          **Section 22. That § 58-29E-13 be AMENDED:**

18          **58-29E-13.** ~~No~~ A pharmacy benefit manager contracting with a ~~covered entity~~  
19          ~~shall~~ third-party payor may not retroactively adjust a claim for reimbursement submitted  
20          by a pharmacy for a prescription drug, unless the adjustment is a result of ~~either of the~~  
21          following:

- 22           (1) A pharmacy audit conducted in accordance with chapter 58-29F; or  
23           (2) A technical billing error.