

JAN 27 2021

A BILL FOR AN ACT

RELATING TO PHARMACY AUDITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that there are currently
2 no regulations governing pharmacy audits by pharmacy benefit
3 managers or insurance providers. This lack of regulation allows
4 pharmacy benefit managers to unilaterally and unjustly audit and
5 recoup payments as a revenue source. Citing unfair auditing
6 practices that can result in high penalties and fees, pharmacies
7 have pushed back on these abusive inspections, resulting in
8 several legislative measures often referred to as "The Fair
9 Pharmacy Audit Act" or the "Pharmacy Audit Bill of Rights",
10 versions of which have been enacted in thirty-eight states.

11 The purpose of this Act is to implement regulations to
12 prevent abusive audits aimed at reducing consumer access to
13 pharmacy benefits and establish procedures for audits of
14 pharmacies conducted by health providers, insurance companies,
15 third-party payors, or any entity that represents such companies
16 or groups.



1 SECTION 2. Chapter 431R, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§431R- Pharmacy audits; procedures. (a)

5 Notwithstanding any other law to the contrary, when an audit of
6 the records of a pharmacy related to claims submitted under a
7 prescription drug benefit plan is conducted by an agency or any
8 entity that represents such agency, it shall be conducted in
9 accordance with this section.

10 (b) The agency or entity conducting an audit shall give
11 the pharmacy at least two weeks written notice prior to
12 conducting an initial audit.

13 (c) Any audit that involves clinical or professional
14 judgment shall be conducted by or in consultation with a
15 pharmacist licensed pursuant to chapter 461 or the board of
16 pharmacy.

17 (d) The period covered by an audit pursuant to this
18 section shall not exceed one year from the date the claim was
19 submitted to or adjudicated by an agency or entity.



1 (e) An audit may not take place during the first seven
2 days of the month due to the high volume of prescriptions filled
3 during that time, unless otherwise consented to by the pharmacy.

4 (f) A finding of an overpayment or underpayment shall be
5 based on the actual overpayment or underpayment and not a
6 projection based on the number of patients served having a
7 similar diagnosis or on the number of similar orders or refills
8 for similar drugs; provided that the calculations of
9 overpayments shall not include dispensing fees.

10 (g) The agency or entity conducting the audit shall not
11 use extrapolation in calculating the recoupments or penalties
12 for audits.

13 (h) Any clerical or record-keeping error, including but
14 not limited to a typographical error, scrivener's error, or
15 computer error, regarding a required document or record, shall
16 not in and of itself constitute fraud; provided that such errors
17 may be subject to recoupment. No recoupment of the cost of
18 drugs or medicinal supplies properly dispensed shall be allowed
19 if the error has occurred and been resolved in accordance with
20 subsections (k) or (o); provided that recoupment shall be
21 allowed to the extent that the error resulted in an overpayment,



1 underpayment, or improper dispensing of drugs or medicinal
2 supplies. Any recoupments shall be made to the payor.

3 (i) If a contract between a pharmacy or pharmacist and a
4 pharmacy benefit manager specifies a period of time in which a
5 pharmacy or pharmacist is allowed to withdraw and resubmit a
6 claim and that period of time expires before the pharmacy
7 benefits manager delivers a preliminary report that identifies
8 discrepancies, the pharmacy benefits manager shall allow a
9 pharmacy or pharmacist to withdraw and resubmit a claim within
10 thirty days after:

11 (1) The preliminary audit findings are delivered if the
12 pharmacy or pharmacist does not request an internal
13 appeal under subsection (o); or

14 (2) The conclusion of the internal appeals process
15 pursuant to subsection (o) if the pharmacy or
16 pharmacist requests an internal appeal.

17 (j) The preliminary audit findings shall be delivered to
18 the pharmacy within sixty days after the conclusion of the
19 audit. Final audit findings shall be delivered to the pharmacy
20 within ninety days after receipt of the preliminary audit



1 findings or resolution of a final appeal, as provided in
2 subsection (o), whichever is later.

3 (k) A pharmacy shall be allowed at least thirty days
4 following receipt of the preliminary audit findings to correct a
5 clerical or record-keeping error or produce documentation to
6 address any discrepancy found during an audit, including to
7 secure and remit an appropriate copy of the record from a
8 hospital, physician, or other authorized practitioner. Any duly
9 issued prescription may be used to validate claims in connection
10 with prescriptions, refills, or changes in prescriptions.

11 (l) No chargebacks, recoupment, or other penalties shall
12 be assessed until the appeals process as set forth in subsection
13 (o) has been exhausted and the final audit findings are
14 delivered to the pharmacy. Interest shall not accrue during the
15 audit period.

16 (m) The entity or agency conducting the audit shall not
17 receive payment based on a percentage of any amount recovered as
18 a result of audit findings.

19 (n) Each pharmacy shall be audited under the same
20 standards and parameters as other similarly situated pharmacies
21 audited by the agency or entity.



1 (o) Each agency or entity conducting an audit under this
2 section shall establish a written appeals process under which a
3 pharmacy shall have at least thirty days from the delivery of
4 the preliminary audit findings to appeal such finding. If,
5 following the appeal, the agency or entity finds that
6 unfavorable audit findings or any portion thereof is
7 unsubstantiated, the agency or entity shall reverse or issue a
8 correction of the findings. If either party is not satisfied
9 following an appeal, the party may seek mediation.

10 (p) Each agency or entity conducting an audit shall
11 provide a copy of the final audit findings, after completion of
12 any review process, to the respective agency that the entity
13 represents, if requested.

14 (q) Notwithstanding any law to the contrary, audit
15 information, documentation, and findings shall remain
16 confidential. An entity or agency conducting an audit shall
17 only have access to previous audit findings concerning a
18 specific pharmacy or pharmacist if that entity or agency
19 conducted the previous audit.

20 (r) This section shall not apply to any investigative
21 audit that involves fraud, wilful misrepresentation, wilful



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1 misconduct, abuse or health or safety issues, including without
2 limitation investigative audits or any other statutory provision
3 that authorizes investigations relating to insurance fraud.

4 (s) The audit criteria set forth in this section shall
5 apply only to audits of claims submitted for payment after
6 July 1, 2021.

7 (t) For the purposes of this section:

8 "Agency" means a health care provider, insurance company,
9 third-party payor, sickness insurance provider under part I of
10 article 10A of chapter 431, mutual benefit society under article
11 I of chapter 432, dental service corporation under chapter 423,
12 and health maintenance organization under chapter 432D.

13 "Entity" means an individual or organization that
14 represents an agency."

15 SECTION 3. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2021.

17

INTRODUCED BY: 



S.B. NO. 975

Report Title:

Pharmacies; Pharmacy Benefit Managers; Audit; Procedures

Description:

Establishes procedures for audits of pharmacies conducted by a health care provider, insurance company, third-party payor, sickness insurance provider, mutual benefit society, dental service corporation, health maintenance organization, or any entity that represents such companies or groups.

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