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# 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) Any audit that involves clinical or professional  
11 judgment shall be conducted by or in consultation with a  
12 pharmacist licensed pursuant to chapter 461 or the board of  
13 pharmacy.

14 (c) A finding of an overpayment or underpayment shall be  
15 based on the actual overpayment or underpayment and not a  
16 projection based on the number of patients served having a  
17 similar diagnosis or the number of similar orders or refills for  
18 similar drugs; provided that the calculations of overpayments  
19 shall not include dispensing fees.



1       (d) The agency or entity conducting the audit shall not  
2 use extrapolation in calculating the recoupments or penalties  
3 for audits.

4       (e) Any clerical or record-keeping error, including but  
5 not limited to a typographical error, scrivener's error, or  
6 computer error, regarding a required document or record, shall  
7 not in and of itself constitute fraud; provided that such errors  
8 may be subject to recoupment. No recoupment of the cost of  
9 drugs or medicinal supplies properly dispensed shall be allowed  
10 if the error has occurred and been resolved in accordance with  
11 subsections (h) or (l); provided that recoupment shall be  
12 allowed to the extent that the error resulted in an overpayment,  
13 underpayment, or improper dispensing of drugs or medicinal  
14 supplies. Any recoupments shall be made to the payor.

15       (f) If a contract between a pharmacy or pharmacist and a  
16 pharmacy benefit manager specifies a period of time in which a  
17 pharmacy or pharmacist is allowed to withdraw and resubmit a  
18 claim and that period of time expires before the pharmacy  
19 benefits manager delivers a preliminary report that identifies  
20 discrepancies, the pharmacy benefits manager shall allow a



1 pharmacy or pharmacist to withdraw and resubmit a claim within  
2 thirty days after:

3 (1) The preliminary audit findings are delivered if the  
4 pharmacy or pharmacist does not request an internal  
5 appeal under subsection (1); or

6 (2) The conclusion of the internal appeals process  
7 pursuant to subsection (1) if the pharmacy or  
8 pharmacist requests an internal appeal.

9 (g) The preliminary audit findings shall be delivered to  
10 the pharmacy within sixty days after the conclusion of the  
11 audit. Final audit findings shall be delivered to the pharmacy  
12 within ninety days after receipt of the preliminary audit  
13 findings or resolution of a final appeal, as provided in  
14 subsection (1), whichever is later.

15 (h) A pharmacy shall be allowed at least thirty days  
16 following receipt of the preliminary audit findings to correct a  
17 clerical or record-keeping error or produce documentation to  
18 address any discrepancy found during an audit, including to  
19 secure and remit an appropriate copy of the record from a  
20 hospital, physician, or other authorized practitioner. Any duly



1 issued prescription may be used to validate claims in connection  
2 with prescriptions, refills, or changes in prescriptions.

3 (i) No chargebacks, recoupment, or other penalties shall  
4 be assessed until the appeals process as set forth in subsection  
5 (l) has been exhausted and the final audit findings are  
6 delivered to the pharmacy. Interest shall not accrue during the  
7 audit period.

8 (j) The entity or agency conducting the audit shall not  
9 receive payment based on a percentage of any amount recovered as  
10 a result of audit findings.

11 (k) Each pharmacy shall be audited under the same  
12 standards and parameters as other similarly situated pharmacies  
13 audited by the agency or entity.

14 (l) Each agency or entity conducting an audit under this  
15 section shall establish a written appeals process under which a  
16 pharmacy shall have at least thirty days from the delivery of  
17 the preliminary audit findings to appeal such finding. If,  
18 following the appeal, the agency or entity finds that  
19 unfavorable audit findings or any portion thereof is  
20 unsubstantiated, the agency or entity shall reverse or issue a



1 correction of the findings. If either party is not satisfied  
2 following an appeal, the party may seek mediation.

3 (m) Each agency or entity conducting an audit shall  
4 provide a copy of the final audit findings, after completion of  
5 any review process, to the respective agency that the entity  
6 represents, if requested.

7 (n) Notwithstanding any law to the contrary, audit  
8 information, documentation, and findings shall remain  
9 confidential. An entity or agency conducting an audit shall  
10 only have access to previous audit findings concerning a  
11 specific pharmacy or pharmacist if that entity or agency  
12 conducted the previous audit.

13 (o) This section shall not apply to any investigative  
14 audit that involves fraud, wilful misrepresentation, wilful  
15 misconduct, abuse or health or safety issues, including without  
16 limitation investigative audits or any other statutory provision  
17 that authorizes investigations relating to insurance fraud.

18 (p) The audit criteria set forth in this section shall  
19 apply only to audits of claims submitted for payment after  
20 July 1, 2021.

21 (q) For the purposes of this section:



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

6       "Entity" means an individual or organization that  
7 represents an agency."

8       SECTION 3. New statutory material is underscored.

9       SECTION 4. This Act shall take effect on July 1, 2050.



**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. Effective 7/1/2050. (SD1)

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