
A BILL FOR AN ACT

RELATING TO PHARMACY.

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

1 SECTION 1. Chapter 461, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§461- Audit of records of registered pharmacist or
5 pharmacy. (a) All requests for an audit of records of a
6 registered pharmacist or pharmacy shall be made in writing and
7 include a requirement that the registered pharmacist or pharmacy
8 provide a signature acknowledging receipt of the notice of
9 request for an audit. When an audit of records of a registered
10 pharmacist or pharmacy is conducted by the State, a county, an
11 insurer regulated under article 10A of chapter 431, a mutual
12 benefit society, a health maintenance organization, a pharmacy
13 benefit manager, a medical service organization, a nonprofit
14 hospital, or any other entity representing the same, the audit
15 shall be conducted in the following manner:
16 (1) Written electronic notice shall be given to the
17 registered pharmacist or pharmacy at least two weeks



1 before conducting the on-site audit for each audit
2 cycle and shall include the prescription number and
3 date of fill;

4 (2) Any audit performed under this section that involves
5 clinical or professional judgment shall be conducted
6 in consultation with a registered pharmacist who has
7 knowledge of this chapter;

8 (3) Any clerical or recordkeeping error identified during
9 an audit, such as a typographical error, scrivener's
10 error, omission, or computer error, shall not, in and
11 of itself, constitute fraud or intentional
12 misrepresentation and shall not be the basis of a
13 recoupment unless the error results in an actual
14 overpayment to the pharmacy or the wrong medication
15 being dispensed to the patient. Notwithstanding any
16 other law to the contrary, no such claim shall be
17 subject to criminal penalties without proof of intent
18 to commit fraud;

19 (4) A registered pharmacist or pharmacy may use the
20 records of a hospital, physician, dentist,
21 veterinarian, advanced practice registered nurse, or



1 other authorized health care provider for drugs or
2 medical supplies written or transmitted by any means
3 of communication for purposes of validating pharmacy
4 records with respect to orders or refills of a legend
5 or narcotic drug;

6 (5) A finding of overpayment or underpayment may be a
7 projection based on the number of patients served
8 having a similar diagnosis or on the number of similar
9 orders or refills for similar drugs; provided that
10 recoupment of claims shall be based on the actual
11 overpayment or underpayment unless the projection for
12 overpayment or underpayment is part of a settlement as
13 agreed to by the registered pharmacist or pharmacy;

14 (6) Each registered pharmacist or pharmacy shall be
15 audited under the standards and parameters as other
16 similarly situated registered pharmacists or
17 pharmacies audited by the State, a county, an insurer
18 regulated under article 10A of chapter 431, a mutual
19 benefit society, a health maintenance organization, a
20 pharmacy benefit manager, a medical service



1 organization, a nonprofit hospital, or any other
2 entity representing the same;

3 (7) A registered pharmacist or pharmacy shall be allowed
4 the length of time described in the registered
5 pharmacist's or pharmacy's contract or provider manual
6 following receipt of the preliminary audit report in
7 which to produce documentation to address any
8 discrepancy found during an audit. A registered
9 pharmacist or pharmacy may correct a clerical or
10 recordkeeping error by submitting an amended claim
11 during the designated time frame if the prescription
12 was dispensed according to the requirements of federal
13 and state law. If the registered pharmacist's or
14 pharmacy's contract or provider manual does not
15 specify the allowed length of time for the registered
16 pharmacist or pharmacy to address any discrepancy
17 found in the audit following receipt of the
18 preliminary report, then that registered pharmacist or
19 pharmacy shall be allowed no less than sixty days
20 following receipt of the preliminary audit report to
21 respond and produce documentation;



- 1 (8) The period covered by an audit shall not exceed two
2 years from the date the claim was submitted to or
3 adjudicated by the State, a county, an insurer
4 regulated under article 10A of chapter 431, a mutual
5 benefit society, a health maintenance organization, a
6 pharmacy benefit manager, a medical service
7 organization, a nonprofit hospital, or any other
8 entity representing the same, except this paragraph
9 shall not apply where a longer period is required by
10 any federal rule or regulation;
- 11 (9) An audit shall not be initiated or scheduled during
12 the first seven calendar days of any month, unless
13 otherwise consented to by the registered pharmacist or
14 pharmacy;
- 15 (10) The preliminary audit report shall be delivered to the
16 registered pharmacist or pharmacy within one hundred
17 twenty days after conclusion of the audit. A final
18 audit report shall be delivered to the registered
19 pharmacist or pharmacy within six months after receipt
20 of the preliminary audit report or final appeal,
21 whichever is later;



- 1 (11) Notwithstanding any other law to the contrary, no
2 audit of a registered pharmacist or pharmacy shall use
3 the accounting practice of extrapolation in
4 calculating recoupments or penalties for audits; and
- 5 (12) Any recoupment related to clerical or recordkeeping
6 errors shall not include the cost of the drug or
7 dispensed product except in the following cases:
- 8 (A) Fraud or other intentional and wilful
9 misrepresentation;
- 10 (B) Dispensing in excess of the pharmacy benefit
11 contract established by a plan sponsor; or
- 12 (C) Prescriptions not filled in accordance with the
13 prescriber's order.
- 14 (b) Recoupment of claims shall only be applied to
15 prescriptions disclosed in the audit and shall not be
16 extrapolated to apply to other prescriptions.
- 17 (c) Recoupments of any disputed funds shall only occur
18 after final internal disposition of the audit, including the
19 appeal process as set forth in subsection (d).
- 20 (d) Each pharmacy benefit manager conducting an audit
21 shall establish an appeals process under which a registered



1 pharmacist or pharmacy may appeal an unfavorable preliminary
2 audit report to the pharmacy benefit manager on whose behalf the
3 audit was conducted. The pharmacy benefit manager conducting
4 any audit shall provide to the registered pharmacist or
5 pharmacy, before or at the time of delivery of the preliminary
6 audit report, a written explanation of the appeals process,
7 including the name, address, and telephone number of the person
8 to whom an appeal should be addressed. If, following the
9 appeal, it is determined that an unfavorable audit report or any
10 portion of the audit report is unsubstantiated, the audit report
11 or the portion shall be dismissed without the necessity of
12 further proceedings.

13 (e) A registered pharmacist or pharmacy may be allowed to
14 reverse and rebill prescriptions due to clerical changes during
15 the correction time frame of the audit.

16 (f) A pharmacy provider may use any prescription that
17 meets the requirements of being a legal prescription under the
18 laws of the State to validate claims submitted for reimbursement
19 for dispensing of original and refill prescriptions or changes
20 made to prescriptions.



1 (g) No auditor shall enter the prescription department.
2 During the auditing process, auditors shall not disrupt the
3 provision of services to the pharmacy's customers. An audit may
4 be conducted in an area outside the pharmacy's prescription
5 department that complies with the requirements of the Health
6 Insurance Portability and Accountability Act of 1996, P.L.
7 104-191.

8 (h) A demand for recoupment, repayment, or offset against
9 future reimbursement for an overpayment on a claim for
10 dispensing of an original or refill prescription shall not
11 include the dispensing fee, unless the prescription that is the
12 subject of the claim was not actually dispensed, was not valid,
13 was fraudulent, or was outside the contract. This subsection
14 shall not apply where a pharmacy is requested, pursuant to a
15 contractual provision, to correct an error in a claim submitted
16 in good faith.

17 (i) Audit information from an audit conducted by one
18 pharmacy benefit manager shall not be shared with or utilized by
19 another pharmacy benefit manager. This subsection shall not
20 apply to an investigative audit that is believed by the pharmacy
21 benefit manager to involve fraud or wilful misrepresentation.



1 (j) Unless otherwise agreed to by contract, no audit
2 finding or demand for recoupment, repayment, or offset against
3 future reimbursement shall be made for any claim for dispensing
4 of an original or refill prescription because of information
5 missing from a prescription or for information not placed in a
6 particular location on a prescription when the information or
7 location of the information is not required or specified by
8 federal or state law.

9 (k) In the event the actual quantity dispensed on a valid
10 prescription for a covered beneficiary exceeds the allowable
11 maximum days supply of the product as defined in the applicable
12 agreement between a pharmacy benefit manager and a pharmacy
13 provider, the amount allowed to be recouped, repaid, or offset
14 against future reimbursement shall be limited to an amount that
15 is calculated based on the quantity of the product dispensed
16 found to be in excess of the allowed days supply quantity and
17 using the cost of the product as reflected on the original
18 claim.

19 (l) A pharmacy provider shall be allowed to dispense, and
20 shall be reimbursed for, the full quantity of the smallest
21 available commercially packaged product, including but not



1 limited to eye drops, insulin, and topical products, that
2 contains the total amount that is required to be dispensed to
3 meet the days supply ordered by the prescriber, even if the full
4 quantity of the commercially prepared package exceeds the
5 maximum days supply allowed.

6 (m) The highest daily total dose that may be utilized by
7 the patient pursuant to the prescriber's directions shall be
8 used to make a determination of the days supply. For
9 prescriptions having a titrated dose schedule, the schedule
10 shall be used to determine the days supply.

11 (n) Subsections (f) to (m) shall not apply to any
12 investigative audit that involves allegations of fraud or wilful
13 misrepresentation.

14 (o) This section shall not apply to the department of
15 health.

16 (p) For purposes of this section, "pharmacy benefit
17 manager" has the same meaning as in section 431S-1."

18 SECTION 2. Section 431S-1, Hawaii Revised Statutes, is
19 amended by amending the definition of "pharmacy benefit manager"
20 to read as follows:



1 ""Pharmacy benefit manager" means any person that performs
2 pharmacy benefit management, including but not limited to a
3 person or entity in a contractual or employment relationship
4 with a pharmacy benefit manager to perform pharmacy benefit
5 management for a covered entity. "Pharmacy benefit manager"
6 does not include a health maintenance organization that is part
7 of a fully integrated delivery system in which enrollees
8 primarily use pharmacies that are owned and operated by the
9 health maintenance organization."

10 SECTION 3. New statutory material is underscored.

11 SECTION 4. This Act shall take effect on July 1, 3000.



Report Title:

Pharmacy; Registered Pharmacists; Audits; Pharmacy Benefit Managers; Exclusion; Health Maintenance Organization; Integrated Delivery System

Description:

Specifies a framework for the administration of audits of records of registered pharmacists and pharmacies. Amends the definition of "pharmacy benefit manager" under chapter 431S, HRS, to exclude certain health maintenance organizations. Effective 7/1/3000. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

