
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 a list identifying the
3 prescriptions subject to audit by prescription number,
4 which may be partially masked, including the last two
5 digits, or a date range sufficient to identify the
6 claims, and date of fill;

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

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



- 1 (4) A registered pharmacist or pharmacy may use the
2 records of a hospital, physician, dentist,
3 veterinarian, advanced practice registered nurse, or
4 other authorized health care provider for drugs or
5 medical supplies written or transmitted by any means
6 of communication for purposes of validating pharmacy
7 records with respect to orders or refills of a legend
8 drug or narcotic drug;
- 9 (5) A finding of overpayment or underpayment may be a
10 projection based on the number of patients served
11 having a similar diagnosis or on the number of similar
12 orders or refills for similar drugs; provided that
13 recoupment of claims shall be based on the actual
14 overpayment or underpayment unless the projection for
15 overpayment or underpayment is part of a settlement as
16 agreed to by the registered pharmacist or pharmacy;
- 17 (6) Each registered pharmacist or pharmacy shall be
18 audited under the standards and parameters as other
19 similarly situated registered pharmacists or
20 pharmacies audited by the State, a county, an insurer
21 regulated under article 10A of chapter 431, a mutual



1 benefit society, a health maintenance organization, a
2 pharmacy benefit manager, a medical service
3 organization, a nonprofit hospital, or any other
4 entity representing the same;

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



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



- 1 of the preliminary audit report or final appeal,
2 whichever is later;
- 3 (11) Notwithstanding any other law to the contrary, no
4 audit of a registered pharmacist or pharmacy shall use
5 the accounting practice of extrapolation in
6 calculating recoupments or penalties for audits;
- 7 (12) Any recoupment related to clerical or recordkeeping
8 errors shall not include the cost of the drug or
9 dispensed product except in the following cases:
- 10 (A) Fraud or other intentional and wilful
11 misrepresentation;
- 12 (B) Dispensing in excess of the pharmacy benefit
13 contract established by a plan sponsor; or
- 14 (C) Prescriptions not filled in accordance with the
15 prescriber's order; and
- 16 (13) The absence of documentation necessary to substantiate
17 the validity of the claim, including but not limited
18 to a valid prescription or drug acquisition record,
19 shall not be considered a clerical or recordkeeping
20 error.



1 (b) Recoupment of claims shall only be applied to
2 prescriptions disclosed in the audit and shall not be
3 extrapolated to apply to other prescriptions.

4 (c) Recoupments of any disputed funds shall only occur
5 after final internal disposition of the audit, including the
6 appeals process as set forth in subsection (d).

7 (d) Each pharmacy benefit manager conducting an audit
8 shall establish an appeals process under which a registered
9 pharmacist or pharmacy may appeal an unfavorable preliminary
10 audit report to the pharmacy benefit manager on whose behalf the
11 audit was conducted. The pharmacy benefit manager conducting
12 any audit shall provide to the registered pharmacist or
13 pharmacy, before or at the time of delivery of the preliminary
14 audit report, a written explanation of the appeals process,
15 including the name, address, and telephone number of the person
16 to whom an appeal should be addressed. If, following the
17 appeal, it is determined that an unfavorable audit report or any
18 portion of the audit report is unsubstantiated, the audit report
19 or the portion shall be dismissed without the necessity of
20 further proceedings.



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

4 (f) A pharmacy provider may use any prescription that
5 meets the requirements of being a legal prescription under the
6 laws of the State to validate claims submitted for reimbursement
7 for dispensing of original and refill prescriptions or changes
8 made to prescriptions.

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

18 (h) Audit information from an audit conducted by one
19 pharmacy benefit manager shall not be shared with or utilized by
20 another pharmacy benefit manager. This subsection shall not



1 apply to an investigative audit that is believed by the pharmacy
2 benefit manager to involve fraud or wilful misrepresentation.

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

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



1 (k) A pharmacy provider shall be allowed to dispense, and
2 shall be reimbursed for, the full quantity of the smallest
3 available commercially packaged product, including but not
4 limited to eye drops, insulin, and topical products, that
5 contains the total amount that is required to be dispensed to
6 meet the days' supply ordered by the prescriber, even if the
7 full quantity of the commercially prepared package exceeds the
8 maximum days supply allowed.

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

14 (m) Subsections (f) to (l) shall not apply to any
15 investigative audit that involves allegations of fraud or wilful
16 misrepresentation.

17 (n) This section shall not apply to the department of
18 health.

19 (o) For the purposes of this section, "pharmacy benefit
20 manager" has the same meaning as in section 431S-1."



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

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

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.



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. (CD1)

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