
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 pharmacist or pharmacy. (a)

5 When an audit of records of a pharmacist or pharmacy is
6 conducted by the State, a county, an insurer regulated under
7 article 10A of chapter 431, a mutual benefit society, a health
8 maintenance organization, a pharmacy benefit manager, a medical
9 service organization, a nonprofit hospital, or any other entity
10 representing the same, the audit shall be conducted in the
11 following manner:

12 (1) Written electronic notice shall be given to the
13 pharmacist or pharmacy at least two weeks before
14 conducting the on-site audit for each audit cycle and
15 shall include the prescription number and date of
16 fill;



- 1 (2) Any audit performed under this section that involves
2 clinical or professional judgment shall be conducted
3 in consultation with a pharmacist who has knowledge of
4 this chapter;
- 5 (3) Any clerical or recordkeeping error identified during
6 an audit, such as a typographical error, scrivener's
7 error, omission, or computer error, shall not, in and
8 of itself, constitute fraud or intentional
9 misrepresentation and shall not be the basis of a
10 recoupment unless the error results in an actual
11 overpayment to the pharmacy or the wrong medication
12 being dispensed to the patient. Notwithstanding any
13 other law to the contrary, no such claim shall be
14 subject to criminal penalties without proof of intent
15 to commit fraud;
- 16 (4) A pharmacist or pharmacy may use the records of a
17 hospital, physician, dentist, veterinarian, advanced
18 practice registered nurse, or other authorized health
19 care provider for drugs or medical supplies written or
20 transmitted by any means of communication for purposes



- 1 of validating pharmacy records with respect to orders
2 or refills of a legend or narcotic drug;
- 3 (5) A finding of overpayment or underpayment may be a
4 projection based on the number of patients served
5 having a similar diagnosis or on the number of similar
6 orders or refills for similar drugs; provided that
7 recoupment of claims shall be based on the actual
8 overpayment or underpayment unless the projection for
9 overpayment or underpayment is part of a settlement as
10 agreed to by the pharmacist or pharmacy;
- 11 (6) Each pharmacist or pharmacy shall be audited under the
12 standards and parameters as other similarly situated
13 pharmacists or pharmacies audited by the State, a
14 county, an insurer regulated under article 10A of
15 chapter 431, a mutual benefit society, a health
16 maintenance organization, a pharmacy benefit manager,
17 a medical service organization, a nonprofit hospital,
18 or any other entity representing the same;
- 19 (7) A pharmacist or pharmacy shall be allowed the length
20 of time described in the pharmacist's or pharmacy's
21 contract or provider manual following receipt of the



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

- 16 (8) The period covered by an audit shall not exceed two
17 years from the date the claim was submitted to or
18 adjudicated by the State, a county, an insurer
19 regulated under article 10A of chapter 431, a mutual
20 benefit society, a health maintenance organization, a
21 pharmacy benefit manager, a medical service



1 organization, a nonprofit hospital, or any other
2 entity representing the same, except this paragraph
3 shall not apply where a longer period is required by
4 any federal rule or regulation;

5 (9) An audit shall not be initiated or scheduled during
6 the first seven calendar days of any month, unless
7 otherwise consented to by the pharmacist or pharmacy;

8 (10) The preliminary audit report shall be delivered to the
9 pharmacist or pharmacy within one hundred twenty days
10 after conclusion of the audit. A final audit report
11 shall be delivered to the pharmacist or pharmacy
12 within six months after receipt of the preliminary
13 audit report or final appeal, whichever is later;

14 (11) Notwithstanding any other law to the contrary, no
15 audit of a pharmacist or pharmacy shall use the
16 accounting practice of extrapolation in calculating
17 recoupments or penalties for audits; and

18 (12) Any recoupment related to clerical or recordkeeping
19 errors shall not include the cost of the drug or
20 dispensed product except in the following cases:



- 1 (A) Fraud or other intentional and wilful
- 2 misrepresentation;
- 3 (B) Dispensing in excess of the pharmacy benefit
- 4 contract established by a plan sponsor; or
- 5 (C) Prescriptions not filled in accordance with the
- 6 prescriber's order.

7 (b) Recoupments of any disputed funds shall only occur
8 after final internal disposition of the audit, including the
9 appeal process as set forth in subsection (c).

10 (c) Each pharmacy benefit manager conducting an audit
11 shall establish an appeals process under which a pharmacist or
12 pharmacy may appeal an unfavorable preliminary audit report to
13 the pharmacy benefit manager on whose behalf the audit was
14 conducted. The pharmacy benefit manager conducting any audit
15 shall provide to the pharmacist or pharmacy, before or at the
16 time of delivery of the preliminary audit report, a written
17 explanation of the appeals process, including the name, address,
18 and telephone number of the person to whom an appeal should be
19 addressed. If, following the appeal, it is determined that an
20 unfavorable audit report or any portion of the audit report is



1 unsubstantiated, the audit report or the portion shall be
2 dismissed without the necessity of further proceedings.

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

8 (e) Auditors may enter the prescription department when
9 accompanied by or authorized by a member of the pharmacy staff.
10 During the auditing process, auditors shall not disrupt the
11 provision of services to the pharmacy's customers. An audit may
12 be conducted in an area outside the pharmacy's prescription
13 department that complies with the requirements of the Health
14 Insurance Portability and Accountability Act of 1996, P.L. 104-
15 191.

16 (f) A demand for recoupment, repayment, or offset against
17 future reimbursement for an overpayment on a claim for
18 dispensing of an original or refill prescription shall not
19 include the dispensing fee, unless the prescription that is the
20 subject of the claim was not actually dispensed, was not valid,
21 was fraudulent, or was outside the contract. This subsection



1 shall not apply where a pharmacy is requested, pursuant to a
2 contractual provision, to correct an error in a claim submitted
3 in good faith.

4 (g) Audit information from an audit conducted by one
5 pharmacy benefit manager shall not be shared with or utilized by
6 another pharmacy benefit manager. This subsection shall not
7 apply to an investigative audit that is believed by the pharmacy
8 benefit manager to involve fraud or wilful misrepresentation.

9 (h) Unless otherwise agreed to by contract, no audit
10 finding or demand for recoupment, repayment, or offset against
11 future reimbursement shall be made for any claim for dispensing
12 of an original or refill prescription because of information
13 missing from a prescription or for information not placed in a
14 particular location on a prescription when the information or
15 location of the information is not required or specified by
16 federal or state law.

17 (i) In the event the actual quantity dispensed on a valid
18 prescription for a covered beneficiary exceeds the allowable
19 maximum days supply of the product as defined in the applicable
20 agreement between a pharmacy benefit manager and a pharmacy
21 provider, the amount allowed to be recouped, repaid, or offset



1 against future reimbursement shall be limited to an amount that
2 is calculated based on the quantity of the product dispensed
3 found to be in excess of the allowed days supply quantity and
4 using the cost of the product as reflected on the original
5 claim.

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

14 (k) The highest daily total dose that may be utilized by
15 the patient pursuant to the prescriber's directions shall be
16 used to make a determination of the days supply. For
17 prescriptions having a titrated dose schedule, the schedule
18 shall be used to determine the days supply.

19 (l) Subsections (d) to (k) shall not apply to any
20 investigative audit that involves allegations of fraud or wilful
21 misrepresentation.



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

3 SECTION 2. New statutory material is underscored.

4 SECTION 3. This Act shall take effect on July 1, 3000.



Report Title:

Pharmacy; Pharmacists; Audits; Pharmacy Benefit Managers

Description:

Specifies a framework for the administration of audits of records of pharmacists and pharmacies. Effective 7/1/3000.
(HD1)

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