LEGISLATURE OF THE STATE OF IDAHO
Sixty-seventh Legislature First Regular Session - 2023

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 291

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO THE FAIR PHARMACY AUDITS ACT; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 66, TITLE 41, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE PURPOSE AND APPLICABILITY, TO PROVIDE REQUIREMENTS AND PROHIBITIONS FOR PHARMACY AUDITS, TO PROVIDE FOR AN APPEALS PROCESS, AND TO PROHIBIT EXTRAPOLATION AUDITS EXCEPT UNDER CERTAIN CIRCUMSTANCES; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 66, Title 41, Idaho Code, and to read as follows:

CHAPTER 66
FAIR PHARMACY AUDITS ACT

41-6601. SHORT TITLE. This chapter shall be known and may be cited as the "Fair Pharmacy Audits Act."

41-6602. PURPOSE AND APPLICABILITY. (1) The purpose of this chapter is to establish minimum and uniform standards and criteria for the audit of pharmacies.

(2) The provisions of this chapter shall apply to any audit of a pharmacy conducted on or after July 1, 2023, unless:

(a) Contrary provisions for a specific type of audit are provided in federal or state law, rule, or procedure;

(b) The audit relates to medicaid payments;

(c) The audit is an investigative audit based on reasonable suspicion of willful misrepresentation, abuse, waste, or fraud; or

(d) The audit is a financial examination conducted by a certified public accountant according to generally accepted auditing standards.

41-6603. REQUIREMENTS AND PROHIBITIONS FOR PHARMACY AUDITS. (1) Any person or entity conducting an audit of a pharmacy shall:

(a) If performing the audit pursuant to a contract, identify and specifically describe the contract provisions authorizing the audit, including provisions relating to audit appeals. No contract may require prescription claim documentation or recordkeeping requirements that exceed requirements set forth in applicable federal or state law, regulation, or rule;

(b) Give written notice to the pharmacy and the pharmacy's contracting agent at least fourteen (14) days prior to conducting the on-site audit. For purposes of this subsection, the term "audit" means an audit conducted on behalf of an auditing entity of any records of a pharmacy

for drugs dispensed by a pharmacy to a covered individual. The pharmacy shall have the opportunity to reschedule any on-site audit no more than seven (7) days from the date designated on the original audit notification;

(c) Not interfere with the delivery of pharmacist services to a patient and use every reasonable effort to minimize inconvenience and disruption to pharmacy operations during the on-site audit process;

(d) Conduct any audit involving clinical or professional judgment by means of or in consultation with a licensed pharmacist;

(e) Prior to leaving the pharmacy after the on-site portion of the pharmacy audit, provide to the pharmacy a complete list of pharmacy records reviewed;

(f) Not subject a pharmacy to a charge-back or recoupment for a clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error, including but not limited to a miscalculated day supply, an incorrectly billed prescription written date, or an incorrect prescription origin code, unless the error resulted in overpayment to the pharmacy. Prior to payment of the claim, the pharmacy shall have the right to submit amended claims electronically to correct clerical or recordkeeping errors in lieu of recoupment. A person shall not be subject to criminal penalties for errors described in this paragraph without proof of the intent required for conviction of the applicable crime;

(g) Limit any fee, charge-back, recoupment, or other adjustment to the actual overpayment associated with the dispensed product or portion of the dispensed product or the actual underpayment or overpayment as set forth in this subsection;

(h) Permit a pharmacy to use any valid prescription, including computerized patterned medical records or the records of a hospital, physician, or other authorized health care practitioner for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or other prescribed drug. Documentation of an oral prescription order that has been verified by the prescribing health care provider shall meet the provisions of this paragraph for the initial audit review;

(i) Permit a pharmacy to use authentic and verifiable statements or records, including but not limited to medication administration records of a nursing home, assisted living facility, hospital, or health care provider with prescriptive authority, to validate the pharmacy record and delivery;

(j) Not include the dispensing fee in the calculation of overpayment of the prescription dispensed in a finding of an audit recoupment unless a prescription was not actually dispensed or a physician denied authorization of a dispensing order;

(k) Audit each pharmacy under standards, regularity, and parameters as other similarly situated pharmacies in a pharmacy network contract in this state. If the person or entity conducting the audit owns or manages pharmacies, all audits of such pharmacies shall be conducted un-

der standards, regularity, and parameters as other similarly situated pharmacies in a pharmacy network contract in this state;

(l) Not exceed fifteen (15) months from the date the claim was submitted to or adjudicated by the person or entity conducting the audit;

(m) Not schedule or initiate an audit during the first seven (7) calendar days of any month unless otherwise consented to by the pharmacy;

(n) Disclose to any plan sponsor whose claims were included in the audit any money recouped in the audit;

(o) Provide network pharmacies information on the adjudication process for unit of use prescription products where the smallest unit either exceeds or does not maximize the benefit day's supply; and

(p) Permit a pharmacy to use a paper or electronic signature log that documents the delivery of a prescription to the possession of the patient or the patient's agent.

(2) Except as otherwise provided by federal or state law, an auditing entity that audits wholesale invoices during an audit of a pharmacy may not audit the pharmacy claims of another health benefit plan or pharmacy benefit manager.

(3) Any person or entity conducting a wholesale invoice audit shall not identify or label a prescription claim as an audit discrepancy when:

(a) The national drug code for the dispensed drug is in a quantity that is a subunit or multiple of the drug purchased by the pharmacist or pharmacy as supported by a wholesale invoice;

(b) The pharmacist or pharmacy dispensed the correct quantity of the drug according to the prescription; and

(c) The drug dispensed by the pharmacist or pharmacy shares all but the last two (2) digits of the national drug code of the drug reflected on the supplier invoice.

(4) Any person or entity conducting a wholesale invoice audit shall accept as evidence, subject to validation, to support the validity of a pharmacy claim related to a dispensed drug:

(a) Supplier invoices issued before the date the drug was dispensed in the pharmacist's or pharmacy's possession; or

(b) Invoices and any supporting documents from any supplier as authorized by federal or state law to transfer ownership of the drug acquired by the pharmacist or pharmacy.

(5) Any person or entity conducting a wholesale invoice audit shall provide, no later than five (5) business days after the date of a request by the pharmacist or pharmacy, all supporting documents the pharmacist's or pharmacy's purchase suppliers provided to the person or entity on whose behalf the audit is being conducted.

(6) Any person or entity conducting an audit shall not audit more than two hundred fifty (250) prescriptions, based on date of service, per calendar year. The annual limit to the number of prescription claims audited shall be inclusive of all audits, including any prescription-related documentation requests from the person or entity conducting the audit or the person or entity on whose behalf the audit is being conducted during a calendar year.

(7) If paper copies of records are requested by the person or entity conducting an audit, the person or entity shall pay twenty-five cents (25¢)

per page to cover the costs incurred by the pharmacy. The person or entity conducting the audit shall provide the pharmacy with accurate instructions, including any required form for obtaining reimbursement for the copied records.

(8) The person or entity conducting an audit shall:

(a) Deliver a preliminary audit findings report to the pharmacy and the pharmacy's contracting agent within sixty (60) calendar days of conducting the audit. The preliminary report shall include contact information for the auditing entity that conducted the pharmacy audit and an appropriate and accessible point of contact, including telephone number, facsimile number, electronic mail address, and auditing firm name and address so that audit results, procedures, and discrepancies may be reviewed. The preliminary audit report shall include but is not limited to claim level information for any discrepancy found and total dollar amounts of claims subject to recoupment;

(b) Allow the pharmacy at least sixty (60) calendar days following receipt of the preliminary audit findings report in which to produce documentation to address any discrepancy found during the audit. A pharmacy may request an extension, not to exceed an additional thirty (30) calendar days;

(c) Deliver a final audit findings report to the pharmacy and the pharmacy's contracting agent signed by the auditor within thirty (30) calendar days after receipt of documentation or evidence provided by the pharmacy, as provided for in section 41-6604, Idaho Code;

(d) Allow the pharmacy to reverse and resubmit claims electronically within thirty (30) days of receipt of the final audit report in lieu of the auditing entity recouping discrepant claim amounts from the pharmacy;

(e) Not recoup any disputed funds until after final disposition of the audit findings, including the appeals process as provided for in section 41-6604, Idaho Code; and

(f) Not accrue interest during the audit and appeal period.

(9) Each person or entity conducting an audit shall provide a copy of the final audit results, and a final audit report upon request, after completion of any review process to any plan sponsor whose claims were included in the audit.

(10) The full amount of any recoupment on an audit shall be refunded to the plan sponsor whose claims were included in the audit and to whom the recoupment is owing. Except as otherwise provided for in this subsection, a charge or assessment for an audit shall not be based, directly or indirectly, on amounts recouped. This subsection shall not prevent the person or entity conducting the audit from charging or assessing the responsible party, directly or indirectly, based on amounts recouped if both of the following conditions are met:

(a) The plan sponsor and the person or entity conducting the audit have a contract that explicitly states the percentage charge or assessment to the plan sponsor; and

(b) A commission to an agent or employee of the person or entity conducting the audit is not based, directly or indirectly, on amounts recouped.

(11) Unless the provisions of this subsection are superseded by state or federal law, auditors shall have access to previous audit reports on a particular pharmacy only when the previous audits were conducted by the auditing person or entity for the same person or entity on whose behalf the audit is being conducted. An auditing vendor contracting with multiple persons or entities shall not use audit reports or other information gained from an audit on a pharmacy to conduct another audit for another person or entity.

41-6604. APPEALS PROCESS. (1) Each person or entity conducting an audit shall establish a written appeals process under which a pharmacy may appeal an unfavorable preliminary audit report or final audit report to the person or entity. The pharmacy must submit documentation or other evidence to support its appeal.

(2) Following an appeal, if the person or entity finds that an unfavorable audit report is unsubstantiated, the person or entity shall dismiss the unsubstantiated portion of the audit report.

(3) Any final audit report, following the final audit appeal period, with a finding of potential criminal conduct shall be referred to the prosecuting attorney having proper jurisdiction upon completion of the appeals process.

41-6605. EXTRAPOLATION AUDIT PROHIBITED. (1) As used in this section, "extrapolation audit" means an audit of a sample of prescription drug benefit claims submitted by a pharmacy to the person or entity conducting an audit that is then used to estimate audit results for a larger batch or group of claims not reviewed by the auditor.

(2) No person or entity may conduct an extrapolation audit unless otherwise required by federal law or federal plans. A person or entity conducting an audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2023.