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

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 270

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; 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; or

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

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, including identification of specific prescription numbers and fill dates to be audited, at least fourteen (14) days prior to conducting the audit. For purposes of this subsection, the term "audit" includes but is not limited to an on-site audit, a desk audit, a wholesale purchase audit, a request for documentation related to the dispensing

of a prescription drug, and a request for documentation related to any reimbursed activity by a pharmacy provider. Notice of a wholesale purchase audit shall be given at least thirty (30) days prior to the audit. The pharmacy shall have the opportunity to reschedule any 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 audit process;

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

(e) Not consider as fraud any 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. Such errors shall not be subject to recoupment. The pharmacy shall have the right to submit amended claims electronically to correct clerical or recordkeeping errors in lieu of recoupment. To the extent that an audit results in the identification of any clerical or recordkeeping errors in a required document or record, the pharmacy shall not be subject to recoupment of funds unless there is proof of intent to commit fraud. A person shall not be subject to criminal penalties for errors provided for in this paragraph without proof of the intent required for conviction of the applicable crime;

(f) Permit a pharmacy to use 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;

(g) Not include the dispensing fee amount or the actual invoice cost 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;

(h) Audit each pharmacy under identical standards, regularity, and parameters as other similarly situated pharmacies. If the person or entity conducting the audit owns or manages pharmacies, all audits of such pharmacies shall be conducted under identical standards, regularity, and parameters;

(i) Not exceed six (6) months from the date the claim was submitted to or adjudicated by the person or entity conducting the audit;

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

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

(l) Not require pharmacists to break open packaging labeled "for single-patient-use only." Packaging labeled "for single-patient-use only" shall be deemed to be the smallest package size available; and

(m) Permit a pharmacy to use the written statement of a patient or the patient's agent for purposes of validating the delivery of a prescription to the possession of the patient or the patient's agent.

(2) Any person or entity that conducts wholesale purchase review during an audit of a pharmacist or pharmacy shall not require the pharmacist or pharmacy to provide a full dispensing report. Wholesaler invoice reviews shall be limited to verification of purchase inventory specific to the pharmacy claims paid by the person or entity conducting the audit or the person or entity on whose behalf the audit is being conducted.

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

(a) Redacted copies of supplier invoices 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 an 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 fifty (50) 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 ($0.25) 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 forty-five (45) calendar days of conducting the audit;

(b) Allow the pharmacy at least ninety (90) calendar days following receipt of the preliminary audit findings report in which to produce docu-

mentation to address any discrepancy found during the audit. A pharmacy may request an extension, not to exceed an additional forty-five (45) calendar days;

(c) Deliver a final audit findings report to the pharmacy and the pharmacy's contracting agent signed by the auditor within ten (10) 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 does 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 may submit documentation or other evidence to support its appeal.

(2) Following an appeal, if the person or entity finds that an unfavorable audit report or any portion of such report is unsubstantiated, the person or entity shall dismiss the audit report or the unsubstantiated portion of the audit report without any further action.

(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. 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.