

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 188

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO PHARMACIES; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A
2 NEW CHAPTER 62, TITLE 41, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO STATE
3 THE PURPOSE AND INTENT, TO DEFINE TERMS, TO PROVIDE APPLICABILITY AND
4 SCOPE, TO PROVIDE PROCEDURES FOR CONDUCTING AND REPORTING AN AUDIT, TO
5 PROVIDE FOR AN APPEAL PROCESS AND TO PROHIBIT THE PRACTICE OF EXTRAPOLA-
6 TION; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 63,
7 TITLE 41, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PRO-
8 VIDE APPLICABILITY, TO PROVIDE REQUIRED PRACTICES FOR PHARMACY BENEFIT
9 MANAGERS, TO PROVIDE FOR REGISTRATION OF PHARMACY BENEFIT MANAGERS,
10 TO PROVIDE THAT WAIVERS BY COVERED ENTITIES ARE AGAINST PUBLIC POLICY,
11 TO PROVIDE FOR ENFORCEMENT AND TO PROVIDE FOR RULEMAKING AUTHORITY;
12 AMENDING CHAPTER 18, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW
13 SECTION 41-1852, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE REQUIREMENTS
14 FOR A PHARMACY BENEFIT MANAGER, TO PROVIDE FOR APPEALS, TO PROVIDE THE
15 REQUIREMENTS FOR AN APPEAL, TO PROVIDE FOR ADJUSTMENTS IF AN APPEAL IS
16 UPHELD AND TO PROVIDE AN EXCEPTION; AND PROVIDING SEVERABILITY.
17

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

19 SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended
20 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
21 ter 62, Title 41, Idaho Code, and to read as follows:

22 CHAPTER 62
23 PHARMACY AUDIT INTEGRITY ACT

24 41-6201. SHORT TITLE. This chapter shall be known and may be cited as
25 the "Pharmacy Audit Integrity Act."

26 41-6202. PURPOSE AND INTENT. The purpose of this chapter is to estab-
27 lish minimum and uniform standards and criteria for the audit of pharmacy
28 records by or on behalf of certain entities.

29 41-6203. DEFINITIONS. For purposes of this chapter:
30 (1) "Generic prescription medication" means a chemically equivalent
31 copy of a brand-name medication with an expired patent.
32 (2) "Pharmacist" and "pharmacy" are as defined in section 54-1705,
33 Idaho Code.
34 (3) "Pharmacy benefit management" means the procurement of prescrip-
35 tion drugs at a negotiated rate for dispensation within this state to covered
36 individuals, the administration or management of prescription drug bene-
37 fits provided by a covered entity for the benefit of covered individuals, or
38 any of the following services provided with regard to the administration of
39 pharmacy benefits:

- 1 (a) Mail order pharmacy;
2 (b) Claims processing, retail network management and payment of claims
3 to pharmacies for prescription drugs dispensed to covered individuals;
4 (c) Clinical formulary development and management services;
5 (d) Rebate contracting and administration;
6 (e) Certain patient compliance, therapeutic intervention and generic
7 substitution programs; and
8 (f) Disease management programs.

9 "Pharmacy benefit management" does not include activities of retail, commu-
10 nity, long-term care or hospital pharmacies licensed under chapter 17, title
11 54, Idaho Code, that are not carried out as part of a contract entered into
12 by that pharmacy with a covered entity to administer and manage payment for
13 pharmacy benefits for covered individuals.

14 (4) "Pharmacy benefit manager" means an entity that performs pharmacy
15 benefits management. "Pharmacy benefit manager" includes a person or entity
16 acting for a pharmacy benefit manager in a contractual or employment rela-
17 tionship in the performance of pharmacy benefits management for a covered
18 entity.

19 41-6204. APPLICABILITY AND SCOPE. (1) This chapter shall apply to
20 any audit of the records of a pharmacy conducted by a managed care company,
21 nonprofit hospital or medical service organization, insurance company,
22 third-party payor, pharmacy benefit manager, a health program administered
23 by a department of the state, or any entity that represents those companies,
24 groups or department.

25 (2) This chapter shall not apply to any investigative audit conducted
26 that involves fraud, willful misrepresentation or abuse including, with-
27 out limitation, investigative audits or any other statutory provision that
28 authorizes investigations relating to insurance fraud or to medical assis-
29 tance as defined in chapter 2, title 56, Idaho Code.

30 41-6205. PROCEDURES FOR CONDUCTING AND REPORTING AN AUDIT. (1) Any en-
31 tity conducting an audit of a pharmacy shall follow these procedures:

- 32 (a) Any audit conducted pursuant to the provisions of this chapter
33 shall be performed by a person or firm licensed under chapter 2, title
34 54, Idaho Code;
35 (b) The pharmacy contract must identify and describe in detail the au-
36 dit procedures;
37 (c) The entity conducting the on-site audit must give the pharmacy
38 written notice at least two (2) weeks before conducting the initial
39 on-site audit for each audit cycle. Audits shall commence on the date
40 and time specified in the written notice;
41 (d) The entity conducting the on-site audit shall not interfere with
42 the delivery of pharmacist services to a patient and shall make every
43 effort to minimize inconvenience and disruption to pharmacy operations
44 during the audit process;
45 (e) Any audit that involves clinical or professional judgment must be
46 conducted by or in consultation with a licensed pharmacist;
47 (f) Any clerical or recordkeeping error, such as a typographical error,
48 scrivener's error or computer error, regarding a required document or

1 record does not constitute fraud and shall not be subject to recoupment
2 costs;

3 (g) A pharmacy may use the records of a hospital, physician or other au-
4 thorized practitioner of medicine for drugs or medicinal supplies writ-
5 ten or transmitted by any means of communication for purposes of vali-
6 dating the pharmacy record with respect to orders or refills of a drug;

7 (h) A finding of an overpayment or underpayment must be based on the ac-
8 tual overpayment or underpayment and may not be a projection based on
9 the number of patients served having a similar diagnosis or on the num-
10 ber of similar orders or refills for similar drugs;

11 (i) A finding of an overpayment shall not include the dispensing fee
12 amount;

13 (j) Each pharmacy shall be audited under the same standards as other
14 similarly situated pharmacies audited by the entity;

15 (k) The period covered by an audit may not exceed one (1) year from the
16 date the claim was submitted to or adjudicated by a managed care com-
17 pany, nonprofit hospital or medical service organization, insurance
18 company, third-party payor, pharmacy benefit manager, a health program
19 administered by a department of the state, or any entity that represents
20 those companies, groups or department;

21 (l) An audit may not be initiated or scheduled during the first seven
22 (7) calendar days of any month due to the high volume of prescriptions
23 filled, unless otherwise consented to by the pharmacy;

24 (m) An auditing entity may not receive payment based on a percentage of
25 the amount recovered;

26 (n) An audit shall include an equal number of generic and nongeneric
27 prescription medications; and

28 (o) An auditing entity shall audit not more than two hundred fifty (250)
29 prescriptions in a twelve (12) month period.

30 (2) An auditing entity must provide the pharmacy with a written report
31 of the audit and comply with the following requirements:

32 (a) The preliminary audit report must be delivered to the pharmacy
33 within ninety (90) days after conclusion of the audit;

34 (b) A pharmacy shall be allowed at least sixty (60) days following re-
35 ceipt of the preliminary audit report in which to produce documentation
36 to address any discrepancy found during the audit;

37 (c) A final audit report shall be delivered to the pharmacy within one
38 hundred twenty (120) days after receipt of the preliminary audit re-
39 port or final appeal, as provided for in section 41-6206, Idaho Code,
40 whichever is later;

41 (d) The audit report must be signed and include the signature of any
42 pharmacist participating in the audit;

43 (e) Any recoupments of disputed funds shall occur only after final in-
44 ternal disposition of the audit, including the appeals process as set
45 forth in section 41-6206, Idaho Code;

46 (f) Interest shall not accrue during the audit period; and

47 (g) After completion of any review process, each entity conducting an
48 audit shall provide a copy of the final audit report to the plan sponsor.

1 41-6206. APPEAL PROCESS. (1) The Idaho department of insurance shall
2 evaluate and resolve any disputes between a pharmacy and a pharmacy benefits
3 manager.

4 (2) Each entity conducting an audit shall establish a written appeals
5 process under which a pharmacy may appeal an unfavorable preliminary audit
6 report to the entity.

7 (3) If, following the appeal, the entity finds that an unfavorable au-
8 dit report or any portion thereof is unsubstantiated, the entity shall dis-
9 miss the audit report or that portion without the necessity of any further
10 action.

11 41-6207. EXTRAPOLATION AUDITS. Notwithstanding any other provision
12 in this act, the entity conducting the audit shall not use the accounting
13 practice of extrapolation in calculating recoupments or penalties for au-
14 dits. As used in this section, "extrapolation" means an audit of a sample
15 of prescription drug benefit claims submitted by a pharmacy to the entity
16 conducting the audit that is then used to estimate audit results for a larger
17 batch or group of claims not reviewed by the auditor.

18 SECTION 2. That Title 41, Idaho Code, be, and the same is hereby amended
19 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
20 ter 63, Title 41, Idaho Code, and to read as follows:

21 CHAPTER 63

22 PHARMACY BENEFIT MANAGER TRANSPARENCY ACT

23 41-6301. SHORT TITLE. This chapter shall be known and may be cited as
24 the "Pharmacy Benefit Manager Transparency Act."

25 41-6302. DEFINITIONS. For purposes of this chapter:

26 (1) "Covered entity" means a health benefit plan as defined in section
27 41-4703, Idaho Code, a health carrier as defined in section 41-5903, Idaho
28 Code, group disability insurance for state officers or employees as provided
29 in section 67-5762, Idaho Code, or an employer, labor union or other group
30 of persons organized in this state that provides health coverage to covered
31 individuals who are employed or reside in this state.

32 (2) "Covered individual" means a member, participant, enrollee, con-
33 tract holder or policyholder or beneficiary of a covered entity who is pro-
34 vided health coverage by the covered entity. "Covered individual" includes
35 a dependent or other person provided health coverage through a contract or
36 health plan for a covered individual.

37 (3) "Generic drug" means a chemically equivalent copy of a brand-name
38 drug with an expired patent.

39 (4) "Labeler" means an entity or person that receives prescription
40 drugs from a manufacturer or wholesaler and repackages those drugs for later
41 retail sale and that has a labeler code from the federal food and drug admin-
42 istration under 21 CFR 270.20. "Labeler" does not mean a person or entity
43 that repackages drugs for use of its participants, members or enrollees or
44 pharmacy operations of any integrated delivery system undertaken for the
45 benefit of patients obtaining care through that system.

1 (5) "Pharmacy benefit management" means the procurement of prescrip-
2 tion drugs at a negotiated rate for dispensation within this state to covered
3 individuals, the administration or management of prescription drug bene-
4 fits provided by a covered entity for the benefit of covered individuals, or
5 any of the following services provided with regard to the administration of
6 pharmacy benefits:

7 (a) Mail order pharmacy;

8 (b) Claims processing, retail network management and payment of claims
9 to pharmacies for prescription drugs dispensed to covered individuals;

10 (c) Clinical formulary development and management services;

11 (d) Rebate contracting and administration;

12 (e) Certain patient compliance, therapeutic intervention and generic
13 substitution programs; and

14 (f) Disease management programs.

15 "Pharmacy benefit management" does not include activities of retail, commu-
16 nity, long-term care or hospital pharmacies licensed under chapter 17, title
17 54, Idaho Code, that are not carried out as part of a contract entered into
18 by that pharmacy with a covered entity to administer and manage payment for
19 pharmacy benefits for covered individuals.

20 (6) "Pharmacy benefit manager" means an entity that performs pharmacy
21 benefit management. "Pharmacy benefit manager" includes a person or entity
22 acting for a pharmacy benefit manager in a contractual or employment rela-
23 tionship in the performance of pharmacy benefit management for a covered en-
24 tity.

25 41-6303. APPLICABILITY. All pharmacy benefit managers who provide
26 pharmacy benefit management for covered entities, or affecting covered
27 lives, in this state, and any contract for pharmacy benefit management en-
28 tered into in this state or by a covered entity in this state, must comply
29 with the provisions of this chapter. The provisions of this chapter shall
30 not apply to medical assistance as defined in chapter 2, title 56, Idaho
31 Code.

32 41-6304. REQUIRED PRACTICES FOR PHARMACY BENEFIT MANAGERS. (1) The
33 business of pharmacy benefit management is one affected by the public in-
34 terest, requiring that pharmacy benefit managers act in good faith, abstain
35 from deception, and practice honesty and equity in all pharmacy benefit man-
36 agement matters.

37 (2) A pharmacy benefit manager shall notify the covered entity in writ-
38 ing of any activity, policy or practice of the pharmacy benefit manager that
39 directly or indirectly presents any conflict of interest with the duties im-
40 posed by this section.

41 (3) A pharmacy benefit manager shall provide to a covered entity all fi-
42 nancial and utilization information requested by the covered entity relat-
43 ing to providing benefits to covered individuals through that covered en-
44 tity and all financial and utilization information relating to services to
45 that covered entity. A pharmacy benefit manager providing information under
46 this section may designate that material as confidential. Information des-
47 ignated as confidential by a pharmacy benefit manager and provided to a cov-
48 ered entity under the provisions of this section may not be disclosed by the

1 covered entity to any person without the consent of the pharmacy benefit man-
2 ager or ordered by a court for good cause shown.

3 (4) With regard to the dispensation of a substitute prescription drug
4 for a prescribed drug to a covered individual, the following provisions
5 shall apply when a pharmacy benefit manager derives any payment or benefit
6 related to the price or cost of a drug dispensed through a pharmacy benefit
7 management contract:

8 (a) The pharmacy benefit manager may substitute a lower-priced generic
9 or therapeutically equivalent drug for a higher-priced prescribed
10 drug;

11 (b) With regard to substitutions in which the substitute drug costs
12 more than the prescribed drug, the substitution must be made for medical
13 reasons that benefit the covered individual. If a substitution is be-
14 ing made under the provisions of this subsection, the pharmacy benefit
15 manager shall obtain the approval of the prescribing health profes-
16 sional or that person's authorized representative after disclosing to
17 the covered individual and the covered entity the cost of both drugs and
18 any benefit or payment directly or indirectly accruing to the pharmacy
19 benefit manager as a result of the substitution; and

20 (c) The pharmacy benefit manager shall disclose in full to the covered
21 entity any benefit or payment received in any form by the pharmacy ben-
22 efit manager as a result of a prescription drug substitution under the
23 provisions of this subsection.

24 (5) A pharmacy benefit manager who derives any payment or benefit for
25 the dispensation of prescription drugs within this state based on volume of
26 sales for certain prescription drugs or classes or brands of drugs within the
27 state must disclose such payment or benefit in full to the covered entity.

28 (6) A pharmacy benefit manager shall disclose to the covered entity all
29 financial terms and arrangements for remuneration of any kind that apply
30 between the pharmacy benefit manager and any prescription drug manufac-
31 turer or labeler including, without limitation, formulary management and
32 drug-switch programs, educational support, claims processing and pharmacy
33 network fees that are charged from retail pharmacies and data sales fees.

34 (7) The agreement between a pharmacy benefit manager and a covered en-
35 tity must include a provision allowing the covered entity to have audited the
36 pharmacy benefit manager's books, accounts and records, including deidenti-
37 fied utilization information, as necessary to confirm that the benefit of a
38 payment received by the pharmacy benefit manager is being disclosed as re-
39 quired by the contract and that other contractual provisions are being exe-
40 cuted as agreed by the parties.

41 (8) A pharmacy benefit manager shall take no action that would restrict
42 a covered individual's choice of pharmacy from which to receive prescription
43 medication.

44 41-6305. REGISTRATION. As of January 1, 2017, all pharmacy benefit
45 managers shall, pursuant to this title, register with the director of the
46 Idaho department of insurance before providing services to covered entities
47 and individuals. Registration shall be effective for two (2) years and may
48 be renewed for an additional two (2) years. The director of the Idaho depart-
49 ment of insurance may deny, suspend, revoke or refuse to renew a registration

1 in circumstances specified in this chapter or in rules promulgated pursuant
2 to the provisions of this chapter.

3 41-6306. WAIVERS. Any waiver by a covered entity of the provisions of
4 this chapter is contrary to public policy and is unenforceable and void.

5 41-6307. ENFORCEMENT. The practices covered by the provisions of this
6 chapter are matters vitally affecting the public interest for the purpose of
7 applying chapter 13, title 41, Idaho Code. A violation of this chapter is
8 not reasonable in relation to the development and preservation of business
9 and is an unfair or deceptive act in trade or commerce and an unfair method of
10 competition for the purpose of applying chapter 13, title 41, Idaho Code.

11 41-6308. RULEMAKING AUTHORITY. The director of the Idaho department
12 of insurance may promulgate, adopt and enforce rules, including fee rules,
13 necessary to implement the provisions of this chapter.

14 SECTION 3. That Chapter 18, Title 41, Idaho Code, be, and the same is
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
16 ignated as Section 41-1852, Idaho Code, and to read as follows:

17 41-1852. MAXIMUM ALLOWABLE COST -- PHARMACY BENEFIT MANAGERS. (1) As
18 used in this section:

19 (a) "List" means the list of drugs for which maximum allowable costs
20 have been established.

21 (b) "Maximum allowable cost" means the maximum amount that a pharmacy
22 benefit manager will reimburse a pharmacy for the cost of a drug.

23 (c) "Multiple source drug" means a therapeutically equivalent drug
24 that is available from at least two (2) manufacturers.

25 (d) "Network pharmacy" means a retail drug outlet that contracts with a
26 pharmacy benefit manager.

27 (e) "Pharmacy benefit manager" is as defined in section 41-6203, Idaho
28 Code.

29 (f) "Therapeutically equivalent" means drugs that are approved by the
30 United States food and drug administration for interstate distribution
31 and the food and drug administration has determined that the drugs will
32 provide essentially the same efficacy and toxicity when administered to
33 an individual in the same dosage regimen.

34 (2) A pharmacy benefit manager:

35 (a) May not place a drug on a list unless there are at least two (2)
36 therapeutically equivalent, multiple source drugs or at least one
37 (1) generic drug available from only one (1) manufacturer generally
38 available for purchase by network pharmacies from national or regional
39 wholesalers;

40 (b) Shall ensure that all drugs on a list are generally available for
41 purchase by pharmacies in this state from national or regional whole-
42 salers;

43 (c) Shall ensure that all drugs on a list are not obsolete;

44 (d) Shall make available to each network pharmacy at the beginning of
45 the term of a contract, and upon renewal of a contract, the sources uti-

1 lized to determine the maximum allowable cost pricing of the pharmacy
2 benefit manager;

3 (e) Shall make a list available to a network pharmacy upon request in a
4 format that is readily accessible to and usable by the network pharmacy;

5 (f) Shall update each list maintained by the pharmacy benefit manager
6 every seven (7) business days and make the updated lists, including
7 all changes in the price of drugs, available to network pharmacies in a
8 readily accessible and usable format; and

9 (g) Shall ensure that dispensing fees are not included in the calcula-
10 tion of maximum allowable cost.

11 (3) A pharmacy benefit manager shall establish a process by which a net-
12 work pharmacy may appeal its reimbursement for a drug subject to maximum al-
13 lowable cost pricing. A network pharmacy may appeal a maximum allowable cost
14 if the reimbursement for the drug is less than the net amount that the network
15 pharmacy paid to the supplier of the drug. An appeal requested under the pro-
16 visions of this section must be completed within thirty (30) calendar days of
17 the pharmacy making the claim for which appeal has been requested.

18 (4) A pharmacy benefit manager shall provide as part of the appeals
19 process established under subsection (3) of this section:

20 (a) A telephone number at which a network pharmacy may contact the phar-
21 macy benefit manager and speak with an individual who is responsible for
22 processing appeals;

23 (b) A final response to an appeal of a maximum allowable cost within
24 seven (7) business days; and

25 (c) If the appeal is denied, the reason for the denial and the national
26 drug code of a drug that may be purchased by similarly situated pharma-
27 cies at a price that is equal to or less than the maximum allowable cost.

28 (5) If an appeal is upheld under this section, the pharmacy benefit man-
29 ager shall make an adjustment on the date that the pharmacy benefit manager
30 makes the determination. The pharmacy benefit manager shall make the ad-
31 justment effective for all similarly situated pharmacies in this state that
32 are within the network.

33 (6) This section shall not apply to medical assistance as defined in
34 chapter 2, title 56, Idaho Code.

35 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared
36 to be severable and if any provision of this act or the application of such
37 provision to any person or circumstance is declared invalid for any reason,
38 such declaration shall not affect the validity of the remaining portions of
39 this act.