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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- PHARMACIES

Introduced By: Representatives Jacquard, Ruggiero, and Fogarty

Date Introduced: February 26, 2020

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 5-19.1-35 of the General Laws in Chapter 5-19.1 entitled
2 "Pharmacies" is hereby amended to read as follows:

3 **5-19.1-35. Audits.**

4 (a) When an on-site audit of the records of a pharmacy is conducted by a carrier or its
5 intermediary, the audit must be conducted in accordance with the following criteria:

6 (1) A finding of overpayment or underpayment must be based on the actual overpayment
7 or underpayment, and not a projection based on the number of patients served having a similar
8 diagnosis, or on the number of similar orders or refills for similar drugs, unless the projected
9 overpayment or denial is a part of a settlement agreed to by the pharmacy or pharmacist;

10 (2) The auditor may not use extrapolation in calculating recoupments or penalties unless
11 required by state or federal laws or regulations;

12 (3) Any audit that involves clinical judgment must be conducted by, or in consultation with,
13 a pharmacist; and

14 (4) Each entity conducting an audit shall establish an appeal process under which a
15 pharmacy may appeal an unfavorable preliminary audit report to the entity.

16 (b) This section does not apply to any audit, review, or investigation that is initiated based
17 on or involving suspected or alleged fraud, willful misrepresentation, or abuse.

18 (c) Prior to an audit, the entity conducting an audit shall give the pharmacy fourteen (14)
19 days advance written notice of the audit and the range of prescription numbers involved in the audit.

1 The carrier or its intermediary may mask the last two digits of the numbers. Additionally, the
2 number of prescriptions shall not exceed one hundred fifty (150) prescription claims and their
3 applicable refills. The time allotted must be adequate to collect all samples. The examination of
4 signature logs shall not exceed twenty-five (25) signature logs in number.

5 (d) A pharmacy has the right to execute the dispute resolution contained in their contract.

6 (e)(1) A preliminary audit report must be delivered to the pharmacy or its corporate office
7 within sixty (60) days after the conclusion of the audit. A pharmacy must be allowed at least thirty
8 (30) days following receipt of the preliminary audit to provide documentation to address any
9 discrepancy found in the audit. A final audit report must be delivered to the pharmacy or its
10 corporate office within ninety (90) days after receipt of the preliminary audit report or final appeal,
11 whichever is later. A charge-back recoupment or other penalty may not be assessed until the appeal
12 process provided by the pharmacy benefits manager has been exhausted and the final report issued.
13 If the identified discrepancy for a single audit exceeds twenty-five thousand dollars (\$25,000),
14 future payments in excess of that amount may be withheld pending the adjudication of an appeal.
15 Auditors shall only have access to previous audit reports on a particular pharmacy conducted for
16 the same entity.

17 (2) Auditors may initiate a desk audit prior to an on-site audit unless otherwise specified in
18 the law.

19 (3) Contracted auditors cannot be paid based on the findings within an audit.

20 (4) Scanned images of all prescriptions including all scheduled controlled substances are
21 allowed to be used by the pharmacist for an audit. Verbally received prescriptions must be accepted
22 upon validation by the auditing entity and applicable for the initial desk or on-site audit.

23 (5) The period covered by an audit may not exceed two (2) years.

24 (6) Within five (5) business days of receiving the audit notification, pharmacies are
25 allowed, at a minimum, one opportunity to reschedule with the auditor if the scheduled audit
26 presents a scheduling conflict for the pharmacist.

27 (f) Any clerical error, typographical error, scrivener's error, or computer error regarding a
28 document or record required under the Medicaid program does not constitute a willful violation
29 and is not subject to criminal penalties without proof of intent to commit fraud.

30 (g) Limitations.

31 (1) Exceptions. The provisions of this chapter do not apply to an investigative audit of
32 pharmacy records when:

33 (i) Fraud, waste, abuse, or other intentional misconduct is indicated by physical review or
34 review of claims data or statements; or

1 (ii) Other investigative methods indicate a pharmacy is or has been engaged in criminal
2 wrongdoing, fraud, or other intentional or willful misrepresentation.

3 (2) Federal law. This chapter does not supersede any audit requirements established by
4 federal law.

5 [\(3\) Enforcement. The office of the health insurance commissioner shall oversee the](#)
6 [enforcement of this section.](#)

7 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would designate the office of the health insurance commissioner to enforce the
- 2 provisions of the law relating to audits of pharmacies.
- 3 This act would take effect upon passage.

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