LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

# LEGISLATIVE BILL 524

Introduced by Christensen, 44.

Read first time January 23, 2013

Committee: Health and Human Services

A BILL

FOR AN ACT relating to pharmacies; to adopt the Pharmacy Audit Integrity Act.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 12 of this act shall be known and may be cited as the Pharmacy Audit Integrity Act.

Sec. 2. The purpose of the Pharmacy Audit Integrity Act is to create a program to provide standards for an audit of pharmacy records carried out by a pharmacy benefits manager or any entity that represents pharmacy benefits managers.

Sec. 3. For purposes of the Pharmacy Audit Integrity Act:

(1) Entity means a pharmacy benefits manager or any person or organization that represents companies, groups, or organizations of pharmacy benefits managers;

(2) Pharmacy benefits manager means a person, business, or other entity that performs pharmacy benefits management. Pharmacy benefits manager includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management; and

(3) Plan sponsor means the employer in the case of an employee benefit plan established or maintained by a single employer, a group purchaser, or the employee organization in the case of a plan established or maintained by an employee organization, or an association or other similar group that establishes or maintains the plan.

Sec. 4. An amendment to pharmacy audit terms in a contract between a pharmacy benefits manager and a pharmacy shall be disclosed to the pharmacy at least sixty days prior to the effective date of the proposed change.

Sec. 5. Unless otherwise prohibited by federal requirements or regulations, any entity conducting a pharmacy audit shall follow the following procedures:

(1) A pharmacy shall be given notice fourteen days before an initial onsite audit is conducted;

(2) An audit that involves clinical or professional judgment shall be conducted by or in consultation with a licensed pharmacist; and

(3) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies.

Sec. 6. Unless otherwise prohibited by federal requirements or regulations, for any entity conducting a pharmacy audit, the following audit items apply:

(1) The period covered by the audit may not exceed twenty-four months from the date that the claim was submitted to or adjudicated by the entity unless a longer period is required under state or federal law;

(2) If an entity uses random sampling as a method of selecting a set of claims for examination, the sample size shall be appropriate for a statistically reliable sample. Notwithstanding section 12 of this act, the auditing entity shall provide the pharmacy a masked list that provides a prescription number or date range that the auditing entity is seeking to audit;

(3) An onsite audit may not take place during the first five business days of the month unless consented to by the pharmacy;

(4) Auditors may not enter the pharmacy area unless escorted where patient-specific information is available and to the extent possible shall be out of sight and hearing range of the pharmacy customers;

(5) Any recoupment shall not be deducted against future remittances until after the appeals process and both parties have received the results of the final audit;

(6) A pharmacy benefits manager may not require information to be written on a prescription unless the information is required to be written on the prescription by state or federal law. Recoupment may be assessed for items not written on the prescription if:

(a)(i) Additional information is required in the provider manual;

(ii) The information is required by the federal Food and Drug Administration; or

(iii) The information is required by the drug manufacturer's product safety program; and

(b) The information in subdivision (i), (ii), or (iii) of this subdivision is not readily available for the auditor at the time of the audit; and

(7) The auditing company or agent may not receive payment based on a percentage of the amount recovered. This subdivision does not prevent the 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 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 entity conducting the audit is not based, directly or indirectly, on amounts recouped.

Sec. 7. For recoupment or chargeback, the following criteria apply:

(1) Audit parameters shall consider consumer-oriented parameters based on manufacturer listings;

(2) A pharmacy's usual and customary price for compounded medications is considered the reimbursable cost unless the pricing methodology is outlined in the provider contract;

(3) A finding of overpayment or underpayment shall be based on the actual overpayment or underpayment and not a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs;

(4) The entity conducting the audit shall not use extrapolation in calculating the recoupment or penalties for audits unless required by state or federal law or regulations;

(5) Calculations of overpayments shall not include dispensing fees unless a prescription was not actually dispensed, the prescriber denied authorization, the prescription dispensed was a medication error by the pharmacy, or the identified overpayment is

solely based on an extra dispensing fee;

(6) An entity may not consider any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error regarding a required document or record as fraud, but such errors may be subject to recoupment;

(7) In the case of errors that have no actual financial harm to the patient or plan, the pharmacy benefits manager shall not assess any chargebacks. Errors that are a result of the pharmacy failing to comply with a formal corrective action plan may be subject to recovery; and

(8) Interest may not accrue during the audit period for either party, beginning with the notice of the audit and ending with the final audit report.

Sec. 8. (1) To validate the pharmacy record and delivery, the pharmacy may use authentic and verifiable statements or records including medication administration records of a nursing home, assisted-living facility, hospital, physician, or other authorized practitioner or additional audit documentation parameters located in the provider manual.

(2) Any legal prescription that meets the requirements in the Pharmacy Practice Act may be used to validate claims in connection with prescriptions, refills, or changes in prescriptions, including medication administration records, faxes, electronic prescriptions, or documented telephone calls from the prescriber or the prescriber's agents.

Sec. 9. The entity conducting the audit shall establish a written appeals process which must include appeals of preliminary reports and final reports.

Sec. 10. (1) A preliminary audit report shall be delivered to the pharmacy within sixty days after the conclusion of the audit.

(2) A pharmacy shall be allowed at least forty-five days following receipt of the preliminary audit to provide documentation to address any discrepancy found in the audit.

(3) A final audit report shall be delivered to the pharmacy within one hundred twenty days after receipt of the preliminary audit report or final appeal, whichever is later.

(4) An entity shall remit any money due to a pharmacy or pharmacist as a result of an underpayment of a claim within forty-five days after the appeals process has been exhausted and the final audit report has been issued.

Sec. 11. If contractually required, an auditing entity shall provide a copy to the plan sponsor of its claims that were included in the audit, and any recouped money shall be returned to the plan sponsor.

Sec. 12. The Pharmacy Audit Integrity Act does not apply to any investigative audit that involves suspected fraud, willful misrepresentation, or abuse.