SENATE BILL NO. 235

INTRODUCED BY BUTTREY, COOK, CURTIS, GIBSON, LEWIS, MILLER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE PHARMACY AUDIT INTEGRITY ACT; AND PROVIDING FOR PROCEDURES AND REQUIREMENTS FOR THE AUDIT OF PHARMACY RECORDS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Pharmacy Audit Integrity Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Audit" means a review of the records of a pharmacy by or on behalf of an entity that finances or reimburses the cost of health care services or pharmaceutical products.

(2) "Entity" includes:

(a) a pharmacy benefits manager;

(b) a health benefit plan;

(c) a third-party administrator; and

(d) a company, group, or agent that represents or is engaged by one of the entities described in this subsection (2).

(3) "Fraud" means an intentional act of deception, misrepresentation, or concealment in order to gain something of value.

(4) "Health benefit plan" means~~:~~

~~(a)~~ a policy or certificate that provides health care insurance or major medical expense insurance or that is offered as a substitute for hospital or medical expense insurance. The term does not include a policy or certificate that provides benefits solely for accident, dental, vision, income replacement, long-term care, a Medicare supplement, a specified disease, or a short-term limited duration or that is offered and marketed as supplemental health insurance.

~~(b) a group insurance plan authorized by Title 2, chapter 18, part 7, or a state employee group benefit~~

~~plan authorized by Title 2, chapter 18, part 8.~~

NEW SECTION. **Section 3. Applicability.** (1) Except as provided in subsection (2), [sections 1 through 6] apply to an audit of the records of a pharmacy licensed under Title 37, chapter 7.

(2) [Sections 1 through 6] do not apply to an audit of pharmacy records when fraud or other intentional and willful misrepresentation is evidenced by the review of claims data, statements, physical review, or other investigative methods.

NEW SECTION. **Section 4. Audit of pharmacy records.** (1) An entity conducting an audit of pharmacy records shall audit a pharmacy using the same standards and parameters as used by the entity in auditing other pharmacies on behalf of the same audit client.

(2) An audit that involves clinical or professional judgment must be conducted by or in consultation with a licensed pharmacist who is employed by or working with the entity conducting the audit.

(3) If an audit is conducted onsite at a pharmacy, the entity conducting the audit:

(a) shall give the pharmacy 10 days' advance written notice of the audit, along with the range of prescription numbers or a date range that will be included in the audit; and

(b) may not audit the pharmacy during the first 5 business days of the month unless the pharmacy agrees to the timing of the audit.

(4) An entity may not audit prescription records that exceed 275 selected prescriptions. The period covered by the audit may not exceed 24 months from the date that the prescription was submitted to or adjudicated by the entity unless a longer period is required under state or federal law.

(5) Except as required by state or federal law, an entity conducting an audit may have access to a pharmacy's previous audit report only if the previous report was prepared by that entity.

(6) To validate a pharmacy record, a pharmacy may use documented statements of records in the pharmacy or pharmacy system, including medication administration records of a nursing home, assisted living facility, hospital, physician, surgeon, or other prescriber authorized by the laws of this state.

(7) IF AN AUDIT RESULTS IN THE DISPUTE OR DENIAL OF A CLAIM, THE ENTITY CONDUCTING THE AUDIT SHALL ALLOW THE PHARMACY TO PRODUCE ADDITIONAL CLAIMS DOCUMENTATION USING ANY COMMERCIALLY REASONABLE METHOD, INCLUDING FAX, MAIL, OR E-MAIL.

NEW SECTION. **Section 5. Prohibitions -- recoupment -- payment -- interest.** An entity conducting an audit may not:

(1) include dispensing fees unless a prescription was not actually dispensed, the prescriber denied authorization, the prescription dispensed was a dispensing error by the pharmacy, or the identified overpayment is based solely on an extra dispensing fee;

(2) recoup funds for prescription clerical or recordkeeping errors, including typographical errors, scrivener's errors, and computer errors, in a required document or record unless the error results in actual financial harm to the entity or to a consumer;

(3) collect any funds, charge-backs, or penalties until the audit and all appeals are final unless the entity is alleging fraud or other intentional or willful misrepresentation THAT IS EVIDENCED BY THE REVIEW OF CLAIMS DATA, STATEMENTS, PHYSICAL REVIEW, OR OTHER INVESTIGATIVE METHODS;

(4) use extrapolation or other statistical expansion techniques in calculating the amount of any recoupment or penalty;

(5) pay the agent or employee who conducted the audit based on a percentage of the amount recovered; or

(6) charge interest during the audit period.

NEW SECTION. **Section 6. Onsite audits -- preliminary and final reports -- appeals.** For audits conducted onsite, the following provisions apply:

(1) An entity that audits a pharmacy shall provide the pharmacy with a preliminary audit report, delivered to the pharmacy or its corporate office of record within 60 days after completion of the audit.

(2) A pharmacy has 30 days following receipt of the preliminary audit report to respond to questions, provide additional documentation, and comment on and clarify findings of the audit. The date of receipt of the report must be determined by the postmark date or the date of the electronic transmission if transferred electronically.

(3) If an audit results in the dispute or denial of a claim, the entity conducting the audit shall allow the pharmacy, for 30 days following receipt of the preliminary audit report, to produce additional claims documentation using any commercially reasonable method, including fax, mail, or e-mail.

(4) (a) Within 120 days after the completion of the appeals process under subsection (5), a final audit report must be delivered to the pharmacy or its corporate office of record.

(b) The final audit report must include a disclosure of any money recovered by the entity that conducted the audit.

(5) An entity that audits a pharmacy shall establish a written policy for a pharmacy to appeal a final audit report. If no remedies are specified by contract or in the pharmacy services manual, the pharmacy may seek to resolve the dispute through mediation.

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [sections 1 through 6].

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