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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- PHARMACIES

Introduced By: Representatives Jacquard, McNamara, Bennett, and Ruggiero

Date Introduced: February 27, 2019

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 5-19.1 of the General Laws entitled "Pharmacies" is hereby  
2 amended by adding thereto the following section:

3 **5-19.1-34. Audits.**

4 (a) When an on-site audit of the records of a pharmacy is conducted by a pharmacy  
5 benefits manager, 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;

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

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

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

17 (c) Prior to an audit, the entity conducting an audit shall give the pharmacy fourteen (14)  
18 days advance written notice of the audit, the range of prescription numbers and the range of dates  
19 included in the audit. Additionally, the number of prescriptions shall not exceed one hundred

1 (100) selected prescription claims which also includes all associated refills, and the time allotted  
2 must be adequate to collect all samples. The examination of signature logs shall not exceed  
3 twenty-five (25) in number.

4 (d) A pharmacy has the right to request mediation by a private mediator, agreed upon by  
5 the pharmacy and the pharmacy benefits manager, to resolve any disagreements. A request for  
6 mediation does not waive any existing rights of appeal available to a pharmacy under this section.

7 (e)(1) A preliminary audit report must be delivered to the pharmacy within sixty (60)  
8 days after the conclusion of the audit. A pharmacy must be allowed at least thirty (30) days  
9 following receipt of the preliminary audit to provide documentation to address any discrepancy  
10 found in the audit. A final audit report must be delivered to the pharmacy within ninety (90) days  
11 after receipt of the preliminary audit report or final appeal, whichever is later. A charge-back,  
12 recoupment or other penalty may not be assessed until the appeal process provided by the  
13 pharmacy benefits manager has been exhausted and the final report issued. Except as provided by  
14 state or federal law, audit information may not be shared. Auditors shall only have access to  
15 previous audit reports on a particular pharmacy conducted by that same entity.

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

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

19 (4) Scanned images of all prescriptions including all scheduled controlled substances are  
20 allowed to be used by the pharmacist for an audit. Verbally received prescriptions must be  
21 accepted and applicable for desk, on-site and follow up appeal documentation.

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

23 (6) Pharmacies are allowed at a minimum one opportunity to reschedule with the auditor  
24 if the scheduled audit presents a scheduling conflict for the pharmacist.

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

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO BUSINESSES AND PROFESSIONS -- PHARMACIES

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- 1           This act would establish audit requirements for pharmacy benefit managers and would
- 2 also establish annual reporting requirements for health insurers.
- 3           This act would take effect upon passage.

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