

SENATE BILL NO. 175

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY SENATOR GIESSEL BY REQUEST

Introduced: 2/10/16

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the registration and duties of pharmacy benefits managers; relating**
2 **to procedures, guidelines, and enforcement mechanisms for pharmacy audits; relating to**
3 **the cost of multi-source generic drugs and insurance reimbursement procedures;**
4 **relating to the duties of the director of the division of insurance; and providing for an**
5 **effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 21.27 is amended by adding new sections to read:

8 **Article 10. Pharmacy Benefits Managers.**

9 **Sec. 21.27.901. Registration of pharmacy benefits managers; scope of**
10 **business practice.** (a) A person may not conduct business in the state as a pharmacy
11 benefits manager unless the person is registered with the director under this section or
12 AS 21.27.905.

13 (b) A pharmacy benefits manager registered under this section may

1 (1) contract with an insurer to administer or manage pharmacy benefits
 2 provided by an insurer for a covered person, including claims processing services for
 3 and audits of payments for prescription drugs and medical devices and supplies;

4 (2) contract with network pharmacies;

5 (3) set the cost of multi-source generic drugs under AS 21.27.945; and

6 (4) adjudicate appeals related to multi-source generic drug
 7 reimbursement.

8 (c) To register under (a) of this section, a person shall

9 (1) submit to the director a registration statement on a form provided
 10 by the director that includes

11 (A) the identity of the applicant;

12 (B) the name, business address, telephone number, and contact
 13 person for the applicant; and

14 (C) where applicable, the federal employer identification
 15 number for the applicant; and

16 (2) pay a registration fee established by the director; the director shall
 17 set the amount of the registration fee to allow the registration and oversight activities
 18 of the division to be self-supporting.

19 (d) In this section, "person" includes a person acting for a pharmacy benefits
 20 manager under a contractual or employment relationship.

21 **Sec. 21.27.905. Renewal of registration.** (a) A pharmacy benefits manager
 22 shall annually renew a registration with the director.

23 (b) To renew a registration under this section, a pharmacy benefits manager
 24 shall pay a renewal fee established by the director. The director shall set the amount of
 25 the renewal fee to allow the renewal and oversight activities of the division to be self-
 26 supporting.

27 **Sec. 21.27.910. Pharmacy audit procedural requirements.** (a) When a
 28 pharmacy benefits manager conducts an audit of the records of a pharmacy, the period
 29 covered by the audit of a claim may not exceed two years from the date that the claim
 30 was submitted to or adjudicated by the pharmacy benefits manager, whichever is
 31 earlier. A claim submitted to or adjudicated by a pharmacy benefits manager does not

1 accrue interest during the audit period.

2 (b) A pharmacy benefits manager conducting an on-site audit shall give the
3 pharmacy written notice of at least 10 business days before conducting an initial audit.

4 (c) A pharmacy benefits manager may not conduct

5 (1) an audit during the first seven calendar days of any month unless
6 agreed to by the pharmacy;

7 (2) more than one on-site audit of a pharmacy within a 12-month
8 period; or

9 (3) on-site audits of more than 250 separate prescriptions at one
10 pharmacy within a 12-month period unless fraud by the pharmacy or an employee of
11 the pharmacy is alleged.

12 (d) If an audit involves clinical or professional judgment, the individual
13 conducting the audit must

14 (1) be a licensed pharmacist; or

15 (2) conduct the audit in consultation with a licensed pharmacist.

16 (e) A pharmacy, in responding to an audit, may use

17 (1) verifiable statements or records, including medication
18 administration records of a nursing home, assisted living facility, hospital, physician,
19 or other authorized practitioner, to validate the pharmacy record;

20 (2) a legal prescription to validate claims in connection with
21 prescriptions, refills, or changes in prescriptions, including medication administration
22 records, prescriptions transmitted by facsimile, electronic prescriptions, or
23 documented telephone calls from the prescriber or the prescriber's agent.

24 (f) A pharmacy benefits manager shall audit each pharmacy under the same
25 standards and parameters as other similarly situated pharmacies in a network
26 pharmacy contract in this state.

27 **Sec. 21.27.915. Overpayment or underpayment.** (a) When a pharmacy
28 benefits manager conducts an audit of a pharmacy, the pharmacy benefits manager
29 shall base a finding of overpayment or underpayment by the pharmacy on the actual
30 overpayment or underpayment and not on a projection based on the number of patients
31 served having a similar diagnosis or on the number of similar orders or refills for

1 similar drugs.

2 (b) A pharmacy benefits manager may not include the dispensing fee amount
3 in a finding of an overpayment unless

4 (1) a prescription was not actually dispensed;

5 (2) the prescriber denied authorization;

6 (3) the prescription dispensed was a medication error by the pharmacy;

7 or

8 (4) the identified overpayment is solely based on an extra dispensing

9 fee.

10 **Sec. 21.27.920. Recoupment.** (a) When a pharmacy benefits manager
11 conducts an audit of a pharmacy, the pharmacy benefits manager shall base the
12 recoupment of overpayments on the actual overpayment of the claim.

13 (b) A pharmacy benefits manager conducting an audit of a pharmacy may
14 recoup overpayments for errors resulting from a pharmacy's failure to comply with a
15 formal corrective action plan.

16 (c) A pharmacy benefits manager conducting an audit of a pharmacy may not

17 (1) use extrapolation in calculating recoupments or penalties for audits,
18 unless required by state or federal contracts;

19 (2) assess a charge-back, recoupment, or other penalty against a
20 pharmacy solely because a prescription is mailed or delivered at the request of a
21 patient; or

22 (3) receive payment

23 (A) based on a percentage of the amount recovered; or

24 (B) for errors that have no actual financial harm to the patient
25 or medical plan.

26 **Sec. 21.27.925. Pharmacy audit reports.** (a) A pharmacy benefits manager
27 shall deliver a preliminary audit report to the pharmacy audited within 60 days after
28 the conclusion of the audit.

29 (b) A pharmacy benefits manager shall allow the pharmacy at least 30 days
30 following receipt of the preliminary audit report to provide documentation to the
31 pharmacy benefits manager to address a discrepancy found in the audit. A pharmacy

benefits manager may grant a reasonable extension upon request by the pharmacy.

(c) A pharmacy benefits manager shall deliver a final audit report to the pharmacy within 120 days after either receipt of the preliminary audit report or final appeal, whichever is later.

Sec. 21.27.930. Pharmacy audit appeal; future repayment. (a) A pharmacy benefits manager conducting an audit shall establish a written appeals process.

(b) Recoupment of disputed funds or repayment of funds to the pharmacy benefits manager by the pharmacy, if permitted by contract, shall occur, to the extent demonstrated or documented in the pharmacy audit findings, after final internal disposition of the audit, including the appeals process. If the identified discrepancy for an individual audit exceeds \$15,000, future payments to the pharmacy may be withheld pending finalization of the audit.

(c) A pharmacy benefits manager may not assess against a pharmacy a charge-back, recoupment, or other penalty until the appeals process has been exhausted and the final report issued.

Sec. 21.27.935. Fraud. When conducting an audit of a pharmacy, a pharmacy benefits manager may not consider clerical or record-keeping errors, including typographical errors, writer's errors, or computer errors regarding a required document or record, to be fraud by the pharmacy.

Sec. 21.27.940. Pharmacy audits; restrictions. The requirements of AS 21.27.901 - 21.27.955 do not apply to an audit

(1) in which suspected fraudulent activity or other intentional or wilful misrepresentation is evidenced by a physical review, a review of claims data, a statement, or another investigative method; or

(2) of claims paid for under the medical assistance program under AS 47.07.

Sec. 21.27.945. Drug pricing list; procedural requirements. (a) A pharmacy benefits manager shall

(1) make available to each network pharmacy at the beginning of the term of the network pharmacy's contract, and upon renewal of the contract, the methodology and sources used to determine the drug pricing list;

(2) provide a telephone number at which a network pharmacy may contact an employee of a pharmacy benefits manager to discuss the pharmacy's appeal;

(3) provide a process for a network pharmacy to have ready access to the list specific to that pharmacy;

(4) review and update applicable list information at least once every seven business days to reflect modification of list pricing;

(5) update list prices within one business day after a significant price update or modification provided by the pharmacy benefits manager's national drug database provider; and

(6) ensure that dispensing fees are not included in the calculation of the list pricing.

(b) When establishing a list, the pharmacy benefits manager shall use

(1) the most up-to-date pricing data to calculate reimbursement to a network pharmacy for drugs subject to list prices;

(2) multi-source generic drugs that are sold or marketed in the state during the list period.

Sec. 21.27.950. Multi-source generic drug appeal. (a) A pharmacy benefits manager shall establish a process by which a network pharmacy, or a network pharmacy's contracting agent, may appeal the reimbursement for a multi-source generic drug. A pharmacy benefits manager shall resolve an appeal from a network pharmacy within 10 calendar days after the network pharmacy or the contracting agent submits the appeal.

(b) A network pharmacy, or a network pharmacy's contracting agent, may appeal a reimbursement from a pharmacy benefits manager for a multi-source generic drug if the reimbursement for the drug is less than the amount that the network pharmacy can purchase from two or more of its contracted suppliers.

(c) A pharmacy benefits manager shall grant a network pharmacy's appeal if an equivalent multi-source generic drug is not available at a price at or below the pharmacy benefits manager's list price from at least one of the network pharmacy's contracted wholesalers who operate in the state. If an appeal is granted, the pharmacy

benefits manager shall adjust the reimbursement of the network pharmacy to equal the network pharmacy acquisition cost for each paid claim included in the appeal.

(d) If the pharmacy benefits manager denies a network pharmacy's appeal, the pharmacy benefits manager shall provide the network pharmacy with the

(1) reason for the denial;

(2) national drug code of an equivalent multi-source generic drug that has been purchased by another network pharmacy located in the state at a price that is equal to or less than the pharmacy benefits manager's list price within seven days after the network pharmacy appeals the claim; and

(3) name of a pharmaceutical wholesaler who operates in the state in which the drug may be acquired by the challenging network pharmacy.

(e) A network pharmacy may request review by the director of an adverse decision from a pharmacy benefits manager within 30 calendar days after receiving the decision. The parties may present all relevant information to the director for the director's review.

(f) The director shall enter an order within 30 calendar days after the date that the network pharmacy submits the request for review that

(1) grants the network pharmacy's appeal and directs the pharmacy benefits manager to make an adjustment to the disputed claim;

(2) denies the network pharmacy's appeal; or

(3) directs other actions considered fair and equitable.

(g) The director shall provide a copy of the decision to both parties within seven calendar days after the decision is issued.

Sec. 21.27.955. Definitions. In AS 21.27.901 - 21.27.955,

(1) "audit" means an official examination and verification of accounts and records;

(2) "claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of filling or refilling a prescription for a drug or for providing a medical supply or device;

(3) "extrapolation" means the practice of inferring a frequency or dollar amount of overpayments, underpayments, invalid claims, or other errors on any

1 portion of claims submitted, based on the frequency or dollar amount of
 2 overpayments, underpayments, invalid claims, or other errors actually measured in a
 3 sample of claims;

4 (4) "list" means the list of multi-source generic drugs for which a
 5 predetermined reimbursement amount has been established such as a maximum
 6 allowable cost or maximum allowable cost list or any other list of prices used by a
 7 pharmacy benefits manager;

8 (5) "multi-source generic drug" means any covered outpatient
 9 prescription drug that the United States Food and Drug Administration has determined
 10 is pharmaceutically equivalent or bioequivalent to the originator or name brand drug
 11 and for which there are at least two drug products that are rated as therapeutically
 12 equivalent under the United States Food and Drug Administration's most recent
 13 publication of "Approved Drug Products with Therapeutic Equivalence Evaluations";

14 (6) "network pharmacy" means a pharmacy that provides covered
 15 health care services or supplies to an insured or a member under a contract with a
 16 network plan to act as a participating provider;

17 (7) "pharmacy" has the meaning given in AS 08.80.480;

18 (8) "pharmacy acquisition cost" means the amount that a
 19 pharmaceutical wholesaler or distributor charges for a pharmaceutical product as listed
 20 on the pharmacy's invoice;

21 (9) "pharmacy benefits manager" means a person that contracts with a
 22 pharmacy on behalf of an insurer to process claims or pay pharmacies for prescription
 23 drugs or medical devices and supplies or provide network management for
 24 pharmacies;

25 (10) "recoupment" means the amount that a pharmacy must remit to a
 26 pharmacy benefits manager when the pharmacy benefits manager has determined that
 27 an overpayment to the pharmacy has occurred.

28 * **Sec. 2.** The uncoded law of the State of Alaska is amended by adding a new section to
 29 read:

30 **APPLICABILITY.** (a) This Act applies to audits of pharmacies conducted by
 31 pharmacy benefits managers and contracts with pharmacy benefits managers entered into on

1 or after the effective date of sec. 1 of this Act.

2 (b) In this section, "pharmacy" and "pharmacy benefits manager" have the meanings
3 given in AS 21.27.955, added by sec. 1 of this Act.

4 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITIONAL PROVISIONS: REGULATIONS. The division of insurance may
7 adopt regulations necessary to implement the changes made by this Act. The regulations take
8 effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
9 law implemented by the regulation.

10 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 REVISOR'S INSTRUCTIONS. The revisor of statutes is requested to renumber
13 AS 21.27.900 as AS 21.27.990. The revisor of statutes is requested to change "AS 21.27.900"
14 to "AS 21.27.990" in AS 21.36.475(c)(2) and (4) and AS 21.97.900(26).

15 * **Sec. 5.** Section 3 of this Act takes effect immediately under AS 01.10.070(c).

16 * **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect January 1, 2017.