## **ACT No. 502**

HOUSE BILL NO. 62

1

## BY REPRESENTATIVES PUGH AND BARROW

2	To amend and reenact R.S. 22:1856.1(A), (B)(introductory paragraph) and (3)(a), (C)(3),
3	(D), and (E) and to enact R.S. 22:1856.1(B)(10) and (11), relative to pharmacy
4	record audits; to provide for standards and requirements concerning pharmacy record
5	audit procedures; to provide for conditions under which recoupment of certain
6	reimbursements to pharmacies may occur; to make technical changes; and to provide
7	for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. R.S. 22:1856.1(A), (B)(introductory paragraph) and (3)(a), (C)(3), (D),
10	and (E) are hereby amended and reenacted and R.S. 22:1856.1(B)(10) and (11) are hereby
11	enacted to read as follows:
12	§1856.1. Pharmacy record audits; recoupment; appeals
13	A. As used in this Section, "entity" means a managed care company,
14	insurance company, third-party payor, or the representative of the managed care
15	company including <u>a</u> pharmacy benefit <del>managers</del> <u>manager</u> , insurance company, or
16	third-party payor.
17	B. Notwithstanding any other provision of law to the contrary, when an on-
18	site onsite audit of the records of a pharmacy is conducted by an entity, the audit
19	shall be conducted in accordance with the following criteria:
20	* * *
21	(3)(a) The entity conducting or any vendor or subcontractor of the entity
22	which conducts the initial on-site onsite audit shall give the pharmacy notice at least
23	two weeks before conducting the initial on-site onsite audit for each audit cycle.
24	* * *

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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1	(10) If the audit is conducted by a vendor of subcontractor of an entity, the
2	vendor or subcontractor shall identify to the pharmacy the entity on whose behalf the
3	audit is being conducted without necessity of this information being requested by the
4	pharmacy.
5	(11) The audit shall be based only on information obtained by the entity
6	conducting the audit and not based on any audit report or other information gained
7	from an audit conducted by a different auditing entity. Nothing in this Paragraph
8	shall prohibit an auditing entity from using an earlier audit report prepared by that
9	auditing entity for the same pharmacy. Except as required by state or federal law,
10	an entity conducting an audit may have access to a pharmacy's previous audit report
11	only if the previous report was prepared by that entity.
12	C.
13	* * *
14	(3)(a) The full amount of any recoupment on an audit shall be refunded to
15	the responsible party.
16	(a) (b) Except as provided in this Subsection, a charge or assessment for an
17	audit shall not be based, directly or indirectly, on amounts recouped.
18	(b) (c) Nothing in this Subsection shall be construed to prevent the entity
19	conducting the audit from charging or assessing the responsible party, directly or
20	indirectly, based on amounts recouped if both of the following conditions are met:
21	(i) The responsible party and the entity have a contract that explicitly states
22	the percentage charge or assessment to the responsible party.
23	(ii) A commission or other payment to an agent or employee of the entity
24	conducting the audit is not based, directly or indirectly, on amounts recouped.
25	* * *
26	D.(1) No pharmacy shall be subject to recoupment of any portion of the
27	reimbursement for the dispensed product of a prescription unless one or more of the
28	following has occurred:

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1	(a) The pharmacy has engaged in fraudulent activity or other intentional and
2	willful misrepresentation, as evidenced by a review of claims data or statements,
3	physical review, or any other investigative method.
4	(b) The pharmacy has engaged in dispensing in excess of the benefit design,
5	as established by the plan sponsor.
6	(c) The pharmacy has not filled prescriptions in accordance with the
7	prescriber's order.
8	(d) The pharmacy has received an actual overpayment.
9	(2) Recoupment of claims shall be based on the actual financial harm to the
10	entity or on the actual overpayment or underpayment. A finding of an overpayment
11	that is the result of dispensing in excess of the benefit design, as established by the
12	plan sponsor, shall be calculated as the difference between what was dispensed in
13	accordance with the prescriber's orders and the dispensing requirements as set forth
14	by the benefit design. Calculations of overpayments shall not include dispensing
15	fees unless one <u>or more</u> of the following conditions is present <u>has been satisfied</u> :
16	(1) (a) A prescription was not actually dispensed.
17	(2) (b) The prescriber denied authorization.
18	(3) (c) The prescription dispensed was a medication error by the pharmacy.
19	(4) (d) The identified overpayment is based solely on an extra dispensing fee.
20	(5) (e) The pharmacy was noncompliant with program guidelines.
21	(6) (f) There was insufficient documentation.
22	E.(1) Each entity conducting an audit shall establish an appeal process under
23	which a pharmacy may appeal an unfavorable preliminary audit report to the entity.
24	(1) (2) If, following an appeal, the entity finds that an unfavorable audit
25	report or any portion of an unfavorable audit report is unsubstantiated, the entity
26	shall dismiss the audit report or the unsubstantiated portion of the audit report
27	without any further proceedings.

1	(2) (3) No interest shall be charged to the entity during the appeal period.
2	(3) (4) Following the final audit report, and if not otherwise provided for in
3	the provider contract, either party may seek mediation to address outstanding
4	disagreements.
5	(4) (5) Notwithstanding any other provision of law to the contrary, the
6	agency conducting the audit shall not use the accounting practice of extrapolation in
7	calculating recoupment or penalties for audits, unless otherwise agreed to by the
8	pharmacy or mandated by a government agency or in the case of fraud.
9	* * *
10	Section 2. This Act shall become effective upon signature by the governor or, if not
11	signed by the governor, upon expiration of the time for bills to become law without signature
12	by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
13	vetoed by the governor and subsequently approved by the legislature, this Act shall become
14	effective on the day following such approval.
15	
	SPEAKER OF THE HOUSE OF REPRESENTATIVES
	SFEARER OF THE HOUSE OF REFRESENTATIVES
	PRESIDENT OF THE SENATE
	GOVERNOR OF THE STATE OF LOUISIANA
	GOVERNOR OF THE STATE OF LOUISIANA
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	APPROVED:

**ENROLLED** 

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