

ACT No. 502

Regular Session, 2014

HOUSE BILL NO. 62

BY REPRESENTATIVES PUGH AND BARROW

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AN ACT

To amend and reenact R.S. 22:1856.1(A), (B)(introductory paragraph) and (3)(a), (C)(3), (D), and (E) and to enact R.S. 22:1856.1(B)(10) and (11), relative to pharmacy record audits; to provide for standards and requirements concerning pharmacy record audit procedures; to provide for conditions under which recoupment of certain reimbursements to pharmacies may occur; to make technical changes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1856.1(A), (B)(introductory paragraph) and (3)(a), (C)(3), (D), and (E) are hereby amended and reenacted and R.S. 22:1856.1(B)(10) and (11) are hereby enacted to read as follows:

§1856.1. Pharmacy record audits; recoupment; appeals

A. As used in this Section, "entity" means a managed care company, insurance company, third-party payor, or the representative of the managed care company including a pharmacy benefit ~~managers~~ manager, insurance company, or third-party payor.

B. Notwithstanding any other provision of law to the contrary, when an ~~on-~~ onsite audit of the records of a pharmacy is conducted by an entity, the audit shall be conducted in accordance with the following criteria:

* * *

(3)(a) The entity ~~conducting~~ or any vendor or subcontractor of the entity which conducts the initial ~~on-site~~ onsite audit shall give the pharmacy notice at least two weeks before conducting the initial ~~on-site~~ onsite audit for each audit cycle.

* * *

1 (10) If the audit is conducted by a vendor or 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:

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 or more of the following conditions ~~is present~~ has been satisfied:

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.

