H.674

Introduced by Representatives Canfield of Fair Haven, Browning of Arlington, McNeil of Rutland Town, Savage of Swanton and Till of Jericho

Referred to Committee on

Date:

Subject: Health; health insurance; pharmacy; pharmacist; audit

Statement of purpose: This bill proposes to enumerate the rights of pharmacists and pharmacies during an audit, as well as to specify their appeal rights and the process for any recoupment of disputed funds.

An act relating to pharmacy audits

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. § 9421 is redesignated to read:

§ 9421. PHARMACY BENEFIT MANAGEMENT; REGISTRATION; INSURER AUDIT OF PHARMACY BENEFIT MANAGER ACTIVITIES

Sec. 2. 18 V.S.A. chapter 79 is added to read:

CHAPTER 79. PHARMACY AUDITS

§ 3801. DEFINITIONS

As used in this subchapter:

(1) "Health insurer" shall have the same meaning as in section 9402 of this title and shall include:

(A) a health insurance company, a nonprofit hospital and medical service corporation, and health maintenance organizations;

(B) an employer, a labor union, or another group of persons organized in Vermont that provides a health plan to beneficiaries who are employed or reside in Vermont;

(C) the state of Vermont and any agent or instrumentality of the state that offers, administers, or provides financial support to state government; and

(D) Medicaid, the Vermont health access plan, Vermont Rx, and any other public health care assistance program.

(2) "Health plan" means a health benefit plan offered, administered, or issued by a health insurer doing business in Vermont.

(3) "Pharmacy" means any individual or entity licensed or registered under 26 V.S.A. chapter 36.

(4) "Pharmacy benefit management" means an arrangement for the procurement of prescription drugs at a negotiated rate for dispensation within this state to beneficiaries, the administration or management of prescription drug benefits provided by a health plan for the benefit of beneficiaries, or any of the following services provided with regard to the administration of pharmacy benefits:

(A) mail service pharmacy;

(B) claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;

(C) clinical formulary development and management services;

(D) rebate contracting and administration;

(E) certain patient compliance, therapeutic intervention, and generic substitution programs; and

(F) disease or chronic care management programs.

(5) "Pharmacy benefit manager" means an entity that performs pharmacy benefit management. The term includes a person or entity in a contractual or employment relationship with an entity performing pharmacy benefit management for a health plan.

(6) "Responsible party" means the entity, including a health insurer or pharmacy benefit manager, responsible for payment of claims for health care services other than:

(A) the individual to whom the health care services were rendered; or

(B) that individual's guardian or legal representative.

§ 3802. PHARMACY RIGHTS DURING AN AUDIT

Notwithstanding any provision of law to the contrary, whenever a health insurer, a third-party payer, or an entity representing a responsible party

conducts an audit of the records of a pharmacy, the pharmacy shall have a right to all of the following:

(1) To have at least 14 days' advance notice of the initial on-site audit for each audit cycle.

(2) Except with the express consent of the pharmacy, not to be subject to the initiation or scheduling of an audit during the first five calendar days of any month due to the high volume of prescriptions filled during that time. The pharmacy shall cooperate with the auditor to establish an alternate date if the need for an audit arises during the excluded days.

(3) Prior to the initiation of an audit, if the audit is to be conducted to address an identified problem, to have the audit limited to claims that are identified by prescription number.

(4) If an audit is to be conducted for a reason other than addressing an identified problem, to have the audit limited to 100 selected prescriptions.

(5) If an audit reveals the need for a review of claims in addition to those described in subdivision (3) or (4) of this section, to have the audit conducted on-site.

(6) To have the period covered by the audit limited to 24 months from the date a claim was submitted to or adjudicated by a responsible party, unless a longer period is permitted under federal law for a federal health plan.

(7) To have auditors enter the prescription department only when accompanied by or authorized by a member of the pharmacy staff, and not to have auditors disrupt the provision of services to the pharmacy's customers.

(8) To have any audit involving clinical judgment conducted with a licensed pharmacist who is employed by or working under contract with the auditing entity.

(9) Not to have clerical or recordkeeping errors, including typographical errors, scrivener's errors, and computer errors, on a required document or record deemed fraudulent in the absence of any other evidence; provided that this subdivision shall not be construed to prohibit recoupment of actual fraudulent payments.

(10) If required under the terms of the contract, to have the auditing entity provide to the pharmacy, upon request, all records related to the audit in an electronic or digital media format.

(11) In order to validate a pharmacy record with respect to a prescription or refill for a controlled substance or narcotic drug, to have the properly documented records of a hospital or of any person authorized by law to prescribed controlled substances transmitted by any means of communication.

(12) To use any prescription that meets the requirements to be a legal prescription under Vermont law to validate claims submitted for

reimbursement for dispensing of original and refill prescriptions, or changes made to prescriptions.

(13) To dispense and receive reimbursement for the full quantity of the smallest available commercially packaged product, including eye drops, insulin, and topical products, that contains the total amount required to be dispensed to meet the days' supply ordered by the prescriber, even if the full quantity of the commercially prepared package exceeds the maximum days' supply allowed.

(14) To determine the days' supply using the highest daily total dose that may be utilized by the patient pursuant to the prescriber's directions, and for prescriptions with a titrated dose schedule, to use the schedule to determine the days' supply.

(15) To have a projection of an overpayment or underpayment based on either the number of patients served with a similar diagnosis or the number of similar prescription orders or refills for similar drugs; provided that this subdivision shall not be construed to prohibit recoupment of actual overpayments unless the projection for overpayment or underpayment is part of a settlement with the pharmacy.

(16) To be subject to recoupment only following the correction of a claim and to have recoupment limited to amounts paid in excess of amounts payable under the corrected claim.

(17) Not to have a demand for recoupment, repayment, or offset against future reimbursement for overpayment of a claim for dispensing of an original or refill prescription include the dispensing fee, unless the prescription that is the subject of the claim was not actual dispensed, was not valid, was fraudulent, or was outside the provisions of the contract; provided that this subsection shall not apply if a pharmacy is required to correct an error in a claim submitted in good faith.

(18) Unless otherwise agreed to by contract, not to have an audit finding or demand for recoupment, repayment, or offset against future reimbursement made for any claim for dispensing of an original or refill prescription due to information missing from a prescription or to information not placed in a particular location when the information or location is not required or specified by state or federal law.

(19) In the event the actual quantity dispensed on a valid prescription for a covered beneficiary exceeded the allowable maximum days' supply of the product as defined in the contract, to have the amount to be recouped, repaid, or offset against future reimbursement limited to an amount calculated based on the quantity of the product dispensed found to be in excess of the allowed days' supply quantity and using the cost of the product as reflected on the original claim.

(20) Not to have the accounting practice of extrapolation used in calculating any recoupment or penalty, unless otherwise required by federal law or by federal health plans.

(21) Except for cases of federal Food and Drug Administration regulation or drug manufacturer safety programs, to be free of recoupments based on either:

(A) documentation requirements in addition to or in excess of state board of pharmacy documentation creation or maintenance requirements; or

(B) a requirement that a pharmacy or pharmacist perform a professional duty in addition to or in excess of state board of pharmacy professional duty requirements.

(22) Except for Medicare claims, to be subject to reversals of approval for drug, prescriber, or patient eligibility upon adjudication of a claim only in cases in which the pharmacy obtained the adjudication by fraud or misrepresentation of claim elements.

(23) To be audited under the same standards and parameters as other similarly situated pharmacies audited by the same entity.

(24) To have the preliminary audit report delivered to the pharmacy within 120 days following the conclusion of the audit.

(25) To have at least 30 days following receipt of the preliminary audit report to produce documentation to address any discrepancy found during the audit.

(26) To have a final audit report delivered to the pharmacy within 90 days after the end of the appeals period, as required by section 3803 of this title.

(27) Except for audits initiated to address an identified problem, to be subject to no more than one audit per calendar year, unless fraud or misrepresentation is reasonably suspected.

(28) Not to have audit information from an audit conducted by one auditing entity shared with or utilized by another auditing entity; provided that this subdivision shall not apply to an investigative audit that is believed by the auditing entity to involve fraud or willful misrepresentation.

§ 3803. APPEALS

(a) Each entity that conducts an audit of a pharmacy shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary report to the entity.

(b) If, following an appeal, the entity finds any portion of an unfavorable audit report to be unsubstantiated, the entity shall dismiss the unsubstantiated portion or portions of the report without any further proceedings.

(c) Each entity conducting an audit shall provide a copy of the audit findings to the plan sponsor, if required under the terms of the contract, only after completion of any appeals process.

§ 3804. PHARMACY AUDIT RECOUPMENTS

(a) Recoupment of any disputed funds shall occur only after the final internal disposition of an audit, including the appeals process set forth in section 3803 of this title, unless fraud or misrepresentation is reasonably suspected.

(b) Recoupment on an audit shall be refunded to the responsible party as contractually agreed upon by the parties.

(c) The entity conducting the audit may charge or assess the responsible party, directly or indirectly, based on amounts recouped if both of the following conditions are met:

(1) the responsible party and the entity conducting the audit have entered into a contract that explicitly states the percentage charge or assessment to the responsible party; and

(2) a commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly, on amounts recouped.

§ 3805. APPLICABILITY

The provisions of this chapter shall not apply to any audit, review, or investigation that involves alleged Medicaid fraud, Medicaid abuse, insurance fraud, or other criminal fraud or misrepresentation.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2012 and shall apply to contracts entered into on and after that date.