

2022 Regular Session

SENATE BILL NO. 32

BY SENATOR FRED MILLS

PHARMACISTS. Provides relative to pharmacy audits. (8/1/22)

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AN ACT

To amend and reenact R.S. 22:1856(B) and 1856.1(A), the introductory paragraph of 1856.1(B), 1856.1(B)(2)(a), (3)(a), and (4)(a), (E)(5), and (G), and to enact R.S. 22:1856.1(H) and 1856.2, relative to pharmacy audits; to provide for the time limit for pharmacy audits; to provide for the prescriptions audited; to provide for compensation of auditors; to require an attestation prior to an audit; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1856(B) and 1856.1(A), the introductory paragraph of 1856.1(B), 1856.1(B)(2)(a), (3)(a), and (4)(a), (E)(5), and (G) are hereby amended and reenacted and R.S. 22:1856.1(H) and 1856.2 are hereby enacted to read as follows:

§1856. Payment standard; limitations on claim filing and audits; remittance advice

\* \* \*

~~B. Health insurance issuers that limit the period of time that a pharmacist or pharmacy under contract for delivery of covered benefits has to submit claims for payment under R.S. 22:1853 or 1854 shall have the same limited period of time following payment of such claims to perform any review or audit for purposes of~~

1 reconsidering the validity of such claims:

2 A pharmacy record audit, reconsideration, or any other review of a  
3 claim for delivery of covered benefits performed by a health insurance issuer  
4 or their representative shall be done in accordance with R.S. 22:1856.1.

5 \* \* \*

6 §1856.1. Pharmacy record audits; recoupment; appeals

7 A.(1) As used in this Section, "entity" means a managed care company,  
8 insurance company, third-party payor, or the representative of the managed care  
9 company including a pharmacy benefit manager, insurance company, or third-party  
10 payor.

11 (2) Except for an alleged fraud, willful misrepresentation, or abuse audit  
12 performed in accordance with Paragraph (G)(2) of this Section, any entity that  
13 limits the period of time that a pharmacist or pharmacy under contract for  
14 delivery of covered benefits has to submit claims for payment pursuant to R.S.  
15 22:1853 or 1854 shall have the same limited period of time following payment  
16 of the claims, up to a maximum time period of one year from the date the claim  
17 was adjudicated, to perform an audit, reconsideration, or any other review of  
18 a claim.

19 B. Notwithstanding any other provision of law to the contrary, ~~when an~~ a  
20 review, reconsideration, or any other audit of the records of a pharmacy is  
21 conducted by an entity, ~~the audit~~ shall be conducted in accordance with the following  
22 criteria:

23 \* \* \*

24 (2)(a) No entity shall conduct an audit at a particular pharmacy more than one  
25 time or for more than one hundred prescriptions annually. However, the  
26 provisions of this Paragraph shall not apply when an entity must return to a  
27 pharmacy to complete an audit already in progress, or there is an identified history  
28 of errors, an identified activity which a reasonable man would believe to be  
29 inappropriate, or illegal activity that the entity has brought to the attention of the

1 pharmacy owner or corporate headquarters of the pharmacy.

2 \* \* \*

3 (3)(a) The entity or any vendor or subcontractor of the entity which conducts  
4 the initial audit shall give the pharmacy notice **and a comprehensive list of claims**  
5 **by prescription number to be audited** at least two weeks before conducting the  
6 initial audit for each audit cycle. **The entity or vendor or subcontractor of the**  
7 **entity shall not receive payment nor compensate the auditor based on the**  
8 **amount directly or indirectly recovered.**

9 \* \* \*

10 (4)(a)(i) Any clerical or record-keeping error, such as a typographical error,  
11 scrivener's error, or computer error, regarding a required document or record shall  
12 not necessarily constitute fraud.

13 ~~(ii) A claim arising pursuant to the provisions of this Section may be subject~~  
14 ~~to recoupment.~~

15 \* \* \*

16 E. \* \* \*

17 (5) Notwithstanding any other provision of law to the contrary, the ~~agency~~  
18 **entity** conducting the audit shall not use the accounting practice of extrapolation in  
19 calculating recoupment or penalties for audits, unless ~~otherwise agreed to by the~~  
20 ~~pharmacy~~ or mandated by a government agency or in the case of fraud.

21 \* \* \*

22 G. This Section shall not apply to:

23 (1) Any quality assurance review, as defined by the time period prior to ~~the~~  
24 ~~reimbursement by the entity to the pharmacy~~ **dispensing of the prescription.**

25 (2) An investigation that is initiated based on or that involves suspected or  
26 alleged fraud, willful misrepresentation, or abuse. **The entity conducting the audit**  
27 **shall provide notice of any investigation initiated pursuant to this Subsection to**  
28 **the division of insurance fraud of the Department of Insurance prior to auditing**  
29 **the pharmacy.**

1                    **H. If, upon investigation, the commissioner of insurance finds a violation**  
 2                    **of this Section has occurred, either on his own initiative or in response to a**  
 3                    **complaint filed with the Department of Insurance, the commissioner shall**  
 4                    **suspend or revoke the license of the entity or, in lieu thereof, impose a fine.**

5                    **§1856.2. Pharmacy record auditors; attestation required**

6                    **A. On or after January 1, 2023, no individual shall perform an audit on**  
 7                    **behalf of an entity pursuant to R.S. 22:1856.1 or any other provision of this**  
 8                    **Subpart unless the individual has attested in writing to the entity on whose**  
 9                    **behalf he is performing the audit that the individual is knowledgeable of**  
 10                   **Louisiana pharmacy audit laws and his intent to conduct the audit in**  
 11                   **compliance with Louisiana law.**

12                   **B. An entity's failure to maintain a copy of the attestation required by**  
 13                   **this Subpart constitutes a violation of R.S. 22:1964(16).**

14                   **C. Any audit conducted by any individual who has not attested in writing**  
 15                   **as required by this Subpart is invalid and of no effect between the parties.**

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Brandi Cannon.

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DIGEST

SB 32 Original

2022 Regular Session

Fred Mills

Present law provides for the payment for prescription drugs, other products and supplies, and pharmacist services submitted by a pharmacist or pharmacy under a contract for the provision of covered benefits with a health insurance issuer.

Present law provides that health insurance issuers that limit the period of time that a pharmacist or pharmacy has to submit claims for payment shall have the same limited period of time following payment of the claims to reconsider the validity of the claims. Proposed law provides that, except in cases of alleged fraud, willful misrepresentation, or abuse, the time period shall not exceed one year from the date a claim was adjudicated to perform any review, reconsideration, or any other audit of the claim.

Present law provides for the audit of pharmacy records and prohibits the conducting of an audit at a particular pharmacy more than one time annually. Proposed law also prohibits an audit for more than 100 prescriptions annually.

Present law provides that the entity which conducts the initial audit shall give the pharmacy notice at least two weeks before conducting the initial audit except in cases of alleged fraud or willful misrepresentation when notice before the initial audit could impede the audit, review, or investigation. Proposed law adds the requirement for the auditor to provide a comprehensive list of claims by prescription number to be audited.

Proposed law provides that the auditor shall not receive payment nor be compensated based on the amount directly or indirectly recovered.

Proposed law provides that the auditor shall provide notice of any investigation initiated based upon fraud to the division of insurance fraud of the Department of Insurance prior to auditing the pharmacy. Proposed law requires the commissioner of insurance to take appropriate enforcement action.

Proposed law provides that, effective January 1, 2023, no individual shall perform an audit unless the individual has attested in writing to the entity on whose behalf he is performing the audit that the individual is knowledgeable of Louisiana pharmacy audit laws and his intent to conduct the audit in compliance with Louisiana law.

Effective August 1, 2022.

(Amends R.S. 22:1856(B) and 1856.1(A), 1856.1(B)(intro para), (B)(2)(a), (3)(a), and (4)(a), (E)(5), and (G); adds R.S. 22:1856.1(H) and 1856.2)