

Regular Session, 2014

HOUSE BILL NO. 62

BY REPRESENTATIVE PUGH

PHARMACISTS: Provides relative to pharmacy record audits

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

10 §1856.1. Pharmacy record audits; recoupment; appeals

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

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

18 * * *

1 D.(1) No pharmacy shall be subject to recoupment of any portion of the
2 reimbursement for the dispensed product of a prescription unless one or more of the
3 following has occurred:

4 (a) Fraudulent activity or other intentional and willful misrepresentation by
5 the pharmacy as evidenced by a review of claims data or statements, physical review,
6 or any other investigative method.

7 (b) The pharmacy has engaged in dispensing in excess of the benefit design,
8 as established by the plan sponsor.

9 (c) The pharmacy has not filled prescriptions in accordance with the
10 prescriber's order.

11 (d) Actual overpayment to the pharmacy.

12 (2) Recoupment of claims shall be based on the actual financial harm to the
13 entity or on the actual overpayment or underpayment. A finding of an overpayment
14 that is the result of dispensing in excess of the benefit design, as established by the
15 plan sponsor, shall be calculated as the difference between what was dispensed in
16 accordance with the prescriber's orders and the dispensing requirements as set forth
17 by the benefit design. Calculations of overpayments shall not include dispensing
18 fees unless one or more of the following conditions ~~is present~~ has been satisfied:

19 ~~(1)~~ (a) A prescription was not actually dispensed.

20 ~~(2)~~ (b) The prescriber denied authorization.

21 ~~(3)~~ (c) The prescription dispensed was a medication error by the pharmacy.

22 ~~(4)~~ (d) The identified overpayment is based solely on an extra dispensing fee.

23 ~~(5)~~ (e) The pharmacy was noncompliant with program guidelines.

24 ~~(6)~~ (f) There was insufficient documentation.

25 E.(1) Each entity conducting an audit shall establish an appeal process under
26 which a pharmacy may appeal an unfavorable preliminary audit report to the entity.

27 ~~(1)~~ (2) If, following an appeal, the entity finds that an unfavorable audit
28 report or any portion of an unfavorable audit report is unsubstantiated, the entity

1 shall dismiss the audit report or the unsubstantiated portion of the audit report
2 without any further proceedings.

3 ~~(2)~~ (3) No interest shall be charged to the entity during the appeal period.

4 ~~(3)~~ (4) Following the final audit report, and if not otherwise provided for in
5 the provider contract, either party may seek mediation to address outstanding
6 disagreements.

7 ~~(4)~~ (5) Notwithstanding any other provision of law to the contrary, the
8 agency conducting the audit shall not use the accounting practice of extrapolation in
9 calculating recoupment or penalties for audits, unless otherwise agreed to by the
10 pharmacy or mandated by a government agency or in the case of fraud.

11 * * *

12 Section 2. This Act shall become effective upon signature by the governor or, if not
13 signed by the governor, upon expiration of the time for bills to become law without signature
14 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
15 vetoed by the governor and subsequently approved by the legislature, this Act shall become
16 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Pugh

HB No. 62

Abstract: Provides for standards and requirements concerning pharmacy record audit procedures, and for conditions under which recoupment of certain reimbursements to pharmacies may occur.

Present law establishes standards and requirements for audits of pharmacy records by an "entity", defined for purposes of present law as a managed care company or its representative, an insurance company, or a third-party payor. Present law further provides for appeals and recoupment procedures related to such audits of pharmacy records. Proposed law retains present law.

Present law requires an entity, as defined in present law, which conducts an initial onsite audit of a pharmacy to give the pharmacy notice at least two weeks before such audit for each audit cycle. Proposed law adds requirement that if a vendor or subcontractor conducts an initial onsite audit of a pharmacy on behalf of an entity, the vendor or subcontractor is subject to the same requirement for providing notice to the pharmacy as is the entity.

Proposed law adds requirement for a vendor or subcontractor of an entity, if conducting a pharmacy records audit on behalf of an entity, to identify to the pharmacy the entity on whose behalf the audit is being conducted without necessity of this information being requested by the pharmacy.

Proposed law adds requirement that a pharmacy records audit be based only on information obtained by the entity conducting the audit and not based on any audit report or other information gained from an audit conducted by a different auditing entity. Provides that nothing in proposed law shall prohibit an auditing entity from using an earlier audit report prepared by that auditing entity for the same pharmacy. Further provides that except as required by present law or federal law, an entity conducting an audit may have access to a pharmacy's previous audit report only if the previous report was prepared by that entity.

Proposed law stipulates that no pharmacy shall be subject to recoupment of any portion of the reimbursement for the dispensed product of a prescription unless one or more of the following has occurred:

- (1) Fraudulent activity or other intentional and willful misrepresentation by the pharmacy as evidenced by a review of claims data or statements, physical review, or any other investigative method.
- (2) The pharmacy has engaged in dispensing in excess of the benefit design, as established by the plan sponsor.
- (3) The pharmacy has not filled prescriptions in accordance with the prescriber's order.
- (4) Actual overpayment to the pharmacy.

Proposed law makes technical changes to present law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 22:1856.1(A), (B)(3)(a), (C)(3), (D), and (E); Adds R.S. 22:1856.1(B)(10) and (11))