2019 Regular Session

HOUSE BILL NO. 538

BY REPRESENTATIVE LEBAS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PHARMACISTS: Provides relative to pharmacy record audits

AN ACT

To amend and reenact R.S. 22:1856.1(B)(introductory paragraph), (2), (3), (7)(b), and (8), (D)(1)(introductory paragraph) and (2)(introductory paragraph), and (F), to enact R.S. 22:1856.1(D)(3), and to repeal R.S. 22:1856.1(G)(3) and (4), relative to pharmacy record audits; to provide for applicability of laws relative to such audits; to provide relative to procedures for such audits; to repeal provisions relative to onsite audits; to provide relative to audits conducted by or in consultation with licensed pharmacists; to provide limitations on recoupment of reimbursements paid to pharmacists; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1856.1(B)(introductory paragraph), (2), (3), (7)(b), and (8), (D)(1)(introductory paragraph) and (2)(introductory paragraph), and (F) are hereby amended and reenacted and R.S. 22:1856.1(D)(3) is hereby enacted to read as follows:

§1856.1. Pharmacy record audits; recoupment; appeals

* * *

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

* * *

(2) No entity shall conduct an ~~on-site~~ audit at a particular pharmacy more than one time annually. However, the provisions of this Paragraph shall not apply when an entity must return to a pharmacy to complete an audit already in progress, or there is an identified history of errors, an identified activity which a reasonable man would believe to be inappropriate, or illegal activity that the entity has brought to the attention of the pharmacy owner or corporate headquarters of the pharmacy.

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

(b) If the audit, review, or investigation is initiated based on or involves alleged fraud or willful misrepresentation, notice before the initial ~~on-site~~ audit is not mandatory where it could impede the audit, review, or investigation.

* * *

(7)

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(b) A pharmacy shall be allowed at least thirty days following receipt of the preliminary audit report in which to initiate an appeal to address any discrepancy found during an ~~on-site~~ audit, as provided in Subsection E of this Section.

* * *

(8) Any audit which involves clinical judgment shall be conducted by or in consultation with a ~~licensed~~ pharmacist <u>licensed in Louisiana</u>.

* * *

D.(1) 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 <u>at the point of adjudication</u>:

* * *

(2) Recoupment of claims shall be based on the actual financial harm to the entity<u>,</u> or on the actual overpayment or underpayment<u>, at the point of adjudication</u>. A finding of an overpayment that is the result of dispensing in excess of the benefit

design, as established by the plan sponsor, shall be calculated as the difference between what was dispensed in accordance with the prescriber's orders and the dispensing requirements as set forth by the benefit design. Calculations of overpayments shall not include dispensing fees unless one or more of the following conditions has been satisfied:

* * *

(3) If any entity determines that the processed or adjudicated claim of a pharmacy qualifies for recoupment based upon the use of manufacturer coupon or copay card, such recoupment shall come from the beneficiary of the reduction if the product is approved by the United States Food and Drug Administration through the new drug application process or abbreviated new drug application, or is an investigational drug which is a biological product as defined in R.S. 40:1169.3.

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F. Unless otherwise provided for in the network agreement, pharmacies or payors may seek mediation to resolve contractual disputes related to pricing or ~~on-site~~ audits.

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Section 2. R.S. 22:1856.1(G)(3) and (4) are hereby repealed in their entirety.

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)]

HB 538 Engrossed 2019 Regular Session LeBas

Abstract: Provides relative to conditions and procedures for pharmacy record audits.

Present law provides criteria for auditing of pharmacy records, including a protocol for onsite audits, by the following entities:

(1) Managed care companies.

(2) Insurance companies.

(3) Third-party payors.

(4) Representatives of managed care companies including pharmacy benefit managers, insurance companies, and third-party payors.

Proposed law repeals all provisions relative to onsite audits of pharmacy records by these entities.

Present law requires that any audit involving clinical judgment be conducted by or in consultation with a licensed pharmacist. Proposed law revises present law to require that such audits be conducted by or in consultation with a pharmacist who is licensed in this state.

Present law provides that no pharmacy shall be subject to recoupment of any portion of the reimbursement for the dispensed product of a prescription unless certain conditions are met. Proposed law revises present law to require that these conditions occur at the point of adjudication in order for the pharmacy to be subject to recoupment.

Proposed law stipulates that if any entity determines that the processed or adjudicated pharmacy claim qualifies for recoupment based upon the use of a manufacturer coupon or copay card, then the recoupment shall come from the beneficiary of the reduction if the product is approved by the U.S. Food and Drug Administration through the new drug application process or abbreviated new drug application, or is an investigational drug which is a biological product as defined in present law.

Proposed law repeals present law relative to pharmacy record audits providing that present law shall not apply to any federally funded activity specifically preempted by law or rule, or to any audit conducted pursuant to the participation of a pharmacy in the La. Medicaid program.

(Amends R.S. 22:1856.1(B)(intro. para.), (2), (3), (7)(b), and (8), (D)(1)(intro. para.) and (2)(intro. para.), and (F); Adds R.S. 22:1856.1(D)(3); Repeals 22:1856.1(G)(3) and (4))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Delete proposed law providing that any audit of a pharmacy with its principal place of business in this state shall be conducted by a pharmacist licensed in Louisiana. Provide instead that any audit which involves clinical judgment shall be conducted by or in consultation with a pharmacist licensed in Louisiana.

2. Provide that proposed law relative to recoupment based upon the use of a manufacturer coupon or copay card shall apply only if the product is approved by the U.S. Food and Drug Administration through the new drug application process or abbreviated new drug application, or is an investigational drug which is a biological product as defined in present law.