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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 218 Engrossed

2021 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 for the remittance advice generated by a health insurance issuer to a pharmacist or pharmacy to be sent on the date of payment and containing certain enumerated information, clearly identified and totaled for each claim listed. Proposed law adds the requirement to include the amount of reimbursement paid to the health insurance issuer and the reimbursement paid to the pharmacy.

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 one hundred 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 no individual shall perform an audit unless the individual has passed an examination which tests the knowledge of the individual concerning pharmacy record audits and the insurance laws and regulations of this state.

Proposed law provides that no pharmacy benefit manager (PBM) or pharmacy services administration organization (PSAO) shall make or allow any direct or indirect reduction of payment to a pharmacist or pharmacy for a drug, device, or service under a reconciliation process to an effective rate of reimbursement.

Proposed law provides that no PBM shall reimburse a pharmacy or pharmacist in this state an amount less than the amount that the PBM was paid by the health plan provider for the same claim.

Present law provides that a PBM is prohibited from conducting or participating in spread pricing in this state unless written notice is provided to the policyholders. Proposed law removes the written notice exception and prohibits spread pricing.

Present law provides that a PBM has the duties of good faith, honesty, trust, confidence, and candor and provides for the standard for the fulfillment of the PBM's duties. Proposed law provides for a PBM to notify a health insurance issuer in writing of any activity, policy, or practice of the PBM that directly or indirectly presents a conflict of interest.

Present law provides that a PBM may obtain and maintain a permit from the La. Board of Pharmacy if the PBM provides certain pharmacy services. Proposed law requires a PBM to obtain and maintain the permit.

Present law provides for certain prohibited acts or unfair and deceptive trade practices by PBMs. Proposed law adds the actions of causing or knowingly permitting the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading, prohibiting a pharmacy from offering delivery services, and reimbursing a pharmacy less than the amount paid by the health plan.

Proposed law shall not invalidate or impede the enforcement of contracts existing at the time of the effective date of proposed law between PBMs and health insurance issuers or pharmacies. Proposed law provides that no new agreements or extensions of existing agreements between a pharmacy benefit manager and a health insurance issuer allowing for spread pricing shall be entered into after January 1, 2022.

Proposed law relative to pharmacy record audits and recoupments shall become effective on July 1, 2022. Proposed law relative to remittance advice shall become effective on January 1, 2023. All other provisions of proposed law are effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 22:1856(B), 1856.1(A), 1856.1(B)(intro para), (B)(2)(a), (3)(a), and (4)(a), (D)(1)(b), (E)(5), and (G), 1860.2(A)(intro para), 1860.3(C) and (D), 1863(2), and 1867(A), R.S. 37:1256(B), and R.S. 40:2868(A)(intro para) and 2870(A)(4); adds R.S. 22:1856(C)(16) and (17), (G), and (H), 1856.1(H), 1856.2, 1860.3(E) and (F), 1863(10), and 1864(C) and R.S. 40:2864(D) and 2870(A)(21), (22), and (23))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Adds reimbursement amounts to the required content of a remittance advice.
2. Clarifies the permitted enforcement actions of the commissioner of insurance.
3. Restores present law relative to the review and audit of pharmacy claims.
4. Requires an individual to pass a test prior to conducting an audit.
5. Deletes proposed law relative to the fiduciary duty of a PBM.
6. Deletes the proposed repeal of the pharmacy benefit manager monitoring advisory council.
7. Provides for various effective dates.
8. Makes technical changes.