SLS 14RS-600 **ORIGINAL**

Regular Session, 2014

SENATE BILL NO. 400

BY SENATOR MILLS

MEDICAID. Provides relative to Medicaid recovery audit contractors. (8/1/14)

AN ACT

To enact Subpart E of Part VI-A of Chapter 3 of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:440.11 through 440.15, relative to recovery audit contractors; to provide legislative findings; to provide definitions; to provide requirements for contractors involved in the recovery of funds; to provide for payment structure; to provide for appeals by contractors; to provide oversight and penalties; to provide for rules and regulations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart E of Part VI-A of Chapter 3 of Title 46 of the Louisiana Revised Statutes of 1950, comprised of R.S. 46:440.11 through 440.15 is hereby enacted to read as follows:

SUBPART E. RECOVERY AUDIT CONTRACTORS

§440.11. Legislative findings

A. Recovery audit contractors, as required by the federal Patient Protection and Affordable Care Act, as amended, can be a useful tool in improving the Medical Assistance Program, particularly by ensuring that Louisiana's healthcare dollars are used for appropriate and necessary

healthcare services.

B. Currently, healthcare providers are subject to numerous audits on both the state and federal level producing additional administrative costs to be paid for by healthcare consumers.

C. By implementing a single audit program as provided for in this Subpart, rules and regulations of the Department of Health and Hospitals can simplify and standardize audits to the benefit of both providers and healthcare consumers.

§440.12. Definitions

As used in this Subpart, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Medical Assistance Program" means the Medicaid program.

(2) "Contractor" means the Medicaid recovery audit contractor chosen by Louisiana to perform audits to ensure the integrity of Medicaid payments made in accordance with the provisions of the Patient Protection and Affordable Care Act.

(3) "Provider" means any healthcare entity who provides services to those eligible for Medicaid and who submits a claim for payment pursuant to the Medicaid program.

§440.13. Requirements for recovery audit contractor

A. Notwithstanding any other provision of law to the contrary, any Medicaid state plan amendment shall require the contractor to complete all of the following:

(1) Review for audit purposes only claims with an initial claim paid date of three years or less prior to the audit.

(2) In consultation with the program, develop and implement a reimbursement reconciliation process for certain claims.

B. Notwithstanding any other provision of law to the contrary, any state plan amendment shall exclude the following from the scope of review of the

contractor:

(1) Claims processed or paid through Medicaid managed care programs, including claims paid through the Bayou Health program.

(2) Medical necessity reviews.

C. Notwithstanding any other provision of the law to the contrary, the contractor shall:

(1) Furnish the provider with a determination letter.

(a) Such letter shall be sent within sixty days of receiving all requested materials from a provider.

(b) Such letter shall set forth all the findings of the audit.

(c) Such letter shall provide a written detailed explanation to the provider of any review, denial or determination of overpayment.

(d) At a minimum, the letter shall include all of the following:

(i) Specific medical criteria on which the denial is based.

(ii) The qualifications of the individual who has recommended the denial.

(iii) The provider's appeal rights.

(2) Utilize provider self-audit only if mutually agreed upon by the provider and the contractor.

(3) Publish on the Internet the process utilized for the approval of new issues for review, as those areas are determined by the Medicaid program.

(4) Allow providers to submit records associated with an audit electronically. Electronic submission shall not be required.

(5) Perform, at least on a semi-annual basis, educational and training programs targeted to healthcare providers who are or may be subject to audit review.

(6) Develop, implement, and publish on its website performance metrics, on a semi-annual basis, related to its performance. By rule or regulation, the program shall promulgate the minimum criteria to be used by the contractor.

D. Notwithstanding any provision of the law to the contrary, the contractor shall not:

(1) Recoup overpayments by the contractor until the appeals process, both formal and informal, have been completed.

(2) Use extrapolation in the audit review process.

(3) Schedule any on-site audits of a provider without advanced written notice of not fewer than ten working days and shall make a good faith effort to mutually agree to a time and place.

(4) Request in any ninety day period more than one percent of the number of claims filed by a provider in the previous state fiscal year, not to exceed two hundred claims. Providers shall be given a minimum of forty-five days to comply with and respond to a records request.

E. Contracts with recovery audit contractors entered into after January 1, 2015, shall not include a contingent fee structure based upon or related to audited claims recoveries or improper payments.

§440.14. Healthcare provider appeals process

A. In the event of a denial of payment or determination of an overpayment by the contractor, a provider shall have the right to an informal and a formal appeals process.

B. Informal appeals process:

(1) From the date of receipt of the initial findings letter by the contractor, an informal discussion and consultation period between the provider and the contractor shall be in effect.

(2) Within forty-five days of receipt of the initial findings letter, a provider shall have the right to request an informal hearing of said findings. Such request shall be in writing to the contractor and the informal hearing shall be held within thirty days of the request.

(3) At the informal hearing the provider shall have the right to present information in writing or orally, to present documents, and to inquire as to the

reasons for the denial or determination of overpayment.

(4) At such informal hearing, the provider shall have a right to be represented by an attorney or an authorized representative. Notice of such representation by an attorney or authorized representative shall be made to the contractor in writing at the time of the request for the hearing.

(5) The contractor and the program integrity representative shall issue a final decision to the informal appeal to the provider within fifteen days of the informal hearing.

C. Formal appeals process:

(1) Within thirty days of the issuance of the final decision, a provider may request an administrative appeal of the final decision.

(2) The request shall be in writing, requesting a hearing before the Division of Administrative Law-Health and Hospitals Section.

(3) A copy of the appeal request shall be provided to the program.

§440.15. Contractor performance oversight; penalties; protections

A. If, in any six-month period, more than twenty-five percent of the contractor's decisions are overturned on appeal, the House Committee on Health and Welfare and the Senate Committee on Health and Welfare shall meet jointly and conduct an oversight hearing to evaluate the contractor's performance. The committees meeting jointly shall provide the program with direction regarding corrective action to be taken and future reevaluations of performance of the contractor.

B. The Department of Health and Hospitals shall, with appropriate input from providers and the public as a whole, promulgate any necessary rules or regulations to improve any issues regarding inappropriate denials and associated penalties.

C. If the formal appeal hearing officer finds that the contractor's denial of a claim was unreasonable, frivolous, or without merit, the contractor shall be called to reimburse the provider the cost associated with the appeal process

incurred by the provider.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Mary Dozier O'Brien.

DIGEST

Mills (SB 400)

Proposed law provides relative to recovery audit contractors, mandated by provisions of the federal Patient Protection and Affordable Care Act.

Proposed law provides for findings by the legislature dealing with the appropriate expenditure of healthcare dollars, particularly through the Medicaid program.

Proposed law provides for definitions.

Proposed law provides for specific requirements for recovery audit contractors, the private entities with whom the state will contract to conduct the audits of the claims of Medicaid providers.

Proposed law provides a framework for a reimbursement reconciliation process, the scope of review for audit purposes, a time frame within which audits may be conducted, and a determination letter to be furnished to the provider.

Proposed law provides for both informal and formal appeal procedures available to providers whose claims have been denied or from whom overpayments are to be repaid.

Proposed law provides for minimum criteria to be utilized by the contractor to be promulgated by the Medicaid program.

Effective August 1, 2014.

(Adds R.S. 46:440.11-440.15)