HLS 14RS-221 ENGROSSED

Regular Session, 2014

HOUSE BILL NO. 62

20

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)(introductory paragraph) and (3)(a), (C)(3),
3	(D), and (E) and to enact R.S. 22:1856.1(B)(10) and (11), relative to pharmacy
4	record audits; to provide for standards and requirements concerning pharmacy record
5	audit procedures; to provide for conditions under which recoupment of certain
6	reimbursements to pharmacies may occur; to make technical changes; and to provide
7	for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. R.S. 22:1856.1(A), (B)(introductory paragraph) and (3)(a), (C)(3), (D),
10	and (E) are hereby amended and reenacted and R.S. 22:1856.1(B)(10) and (11) are hereby
11	enacted to read as follows:
12	§1856.1. Pharmacy record audits; recoupment; appeals
13	A. As used in this Section, "entity" means a managed care company,
14	insurance company, third-party payor, or the representative of the managed care
15	company including a pharmacy benefit managers manager, insurance company, or
16	third-party payor.
17	B. Notwithstanding any other provision of law to the contrary, when an on-
18	site onsite audit of the records of a pharmacy is conducted by an entity, the audit
19	shall be conducted in accordance with the following criteria:

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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(3)(a) The entity conducting or any vendor or subcontractor of the entity 2 which conducts the initial on-site onsite audit shall give the pharmacy notice at least 3 two weeks before conducting the initial on-site onsite audit for each audit cycle. 4 5 (10) If the audit is conducted by a vendor or subcontractor of an entity, the vendor or subcontractor shall identify to the pharmacy the entity on whose behalf the 6 7 audit is being conducted without necessity of this information being requested by the 8 pharmacy. 9 (11) The audit shall be based only on information obtained by the entity 10 conducting the audit and not based on any audit report or other information gained 11 from an audit conducted by a different auditing entity. Nothing in this Paragraph 12 shall prohibit an auditing entity from using an earlier audit report prepared by that 13 auditing entity for the same pharmacy. Except as required by state or federal law, 14 an entity conducting an audit may have access to a pharmacy's previous audit report 15 only if the previous report was prepared by that entity. 16 C. 17 18 (3)(a) The full amount of any recoupment on an audit shall be refunded to 19 the responsible party. 20 (a) (b) Except as provided in this Subsection, a charge or assessment for an 21 audit shall not be based, directly or indirectly, on amounts recouped. 22 (b) (c) Nothing in this Subsection shall be construed to prevent the entity 23 conducting the audit from charging or assessing the responsible party, directly or 24 indirectly, based on amounts recouped if both of the following conditions are met: 25 (i) The responsible party and the entity have a contract that explicitly states 26 the percentage charge or assessment to the responsible party. 27 (ii) A commission or other payment to an agent or employee of the entity 28 conducting the audit is not based, directly or indirectly, on amounts recouped. 29

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	(e) The pharmacy received reimbursement based on incorrect information
13	it submitted on the initial claim.
14	(2) Recoupment of claims shall be based on the actual financial harm to the
15	entity or on the actual overpayment or underpayment. A finding of an overpayment
16	that is the result of dispensing in excess of the benefit design, as established by the
17	plan sponsor, shall be calculated as the difference between what was dispensed in
18	accordance with the prescriber's orders and the dispensing requirements as set forth
19	by the benefit design. Calculations of overpayments shall not include dispensing
20	fees unless one <u>or more</u> of the following conditions is present <u>has been satisfied</u> :
21	(1) (a) A prescription was not actually dispensed.
22	(2) (b) The prescriber denied authorization.
23	(3) (c) The prescription dispensed was a medication error by the pharmacy.
24	(4) (d) The identified overpayment is based solely on an extra dispensing fee.
25	(5) (e) The pharmacy was noncompliant with program guidelines.
26	$\frac{(6)}{(f)}$ There was insufficient documentation.
27	E.(1) Each entity conducting an audit shall establish an appeal process under
28	which a pharmacy may appeal an unfavorable preliminary audit report to the entity.

1 (1) (2) If, following an appeal, the entity finds that an unfavorable audit 2 report or any portion of an unfavorable audit report is unsubstantiated, the entity 3 shall dismiss the audit report or the unsubstantiated portion of the audit report 4 without any further proceedings. (2) (3) No interest shall be charged to the entity during the appeal period. 5 (3) (4) Following the final audit report, and if not otherwise provided for in 6 7 the provider contract, either party may seek mediation to address outstanding 8 disagreements. 9 (4) (5) Notwithstanding any other provision of law to the contrary, the 10 agency conducting the audit shall not use the accounting practice of extrapolation in 11 calculating recoupment or penalties for audits, unless otherwise agreed to by the 12 pharmacy or mandated by a government agency or in the case of fraud. 13 14 Section 2. This Act shall become effective upon signature by the governor or, if not 15 signed by the governor, upon expiration of the time for bills to become law without signature 16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If 17 vetoed by the governor and subsequently approved by the legislature, this Act shall become 18 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)]

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

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

<u>Present law</u> requires an entity, as defined in <u>present law</u>, 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

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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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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 <u>proposed law</u> 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 <u>present law</u> 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.

<u>Proposed law</u> 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.
- (5) The pharmacy received reimbursement based on incorrect information it submitted on the initial claim.

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

## Summary of Amendments Adopted by House

Committee Amendments Proposed by <u>House Committee on Health and Welfare</u> to the <u>original</u> bill.

- 1. In the enumerated list of conditions that subject a pharmacy to potential recoupment of reimbursement for the dispensed product of a prescription, added the condition of the pharmacy receiving reimbursement based on incorrect information that it submitted on the initial claim.
- 2. Made technical change.