



Senate Bill No. 14

Public Act No. 14-193

AN ACT CONCERNING PHARMACY AUDITS AND ELECTRONIC FUNDS TRANSFER PAYMENTS TO PHARMACIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2014*) (a) As used in this section:

(1) "Extrapolation" means the practice of inferring a frequency of dollar amount of overpayments, underpayments, nonvalid claims or other errors on any portion of claims submitted, based on the frequency or dollar amount of overpayments, underpayments, nonvalid claims or other errors actually measured in a sample of claims;

(2) "Pharmacy audit" means an audit, conducted on-site or remotely by or on behalf of a pharmacy benefits manager or plan sponsor of any records of a pharmacy for prescription drugs or prescription devices dispensed by such pharmacy to beneficiaries of a health benefit plan. "Pharmacy audit" does not include (A) a concurrent review or desk audit that occurs within three business days of the pharmacy's transmission of a claim to a pharmacy benefits manager or plan sponsor, or (B) a concurrent review or desk audit where no charge-back or recoupment is demanded by the pharmacy benefits manager

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or plan sponsor;

(3) "Plan sponsor" has the same meaning as described in section 38a-479aaa of the general statutes, as amended by this act.

(b) (1) No entity other than a pharmacy benefits manager or a plan sponsor shall conduct a pharmacy audit unless such entity and manager or sponsor, as applicable, have executed a written agreement for the conducting of pharmacy audits. Prior to conducting a pharmacy audit on behalf of such manager or sponsor, such entity shall notify the pharmacy in writing that such entity and manager or sponsor, as applicable, have executed such agreement.

(2) Except as otherwise provided by state or federal law, an entity conducting a pharmacy audit may have access to a pharmacy's previous pharmacy audit report only if such report was prepared by such entity.

(3) Any information collected during a pharmacy audit shall be confidential by law, except that the entity conducting the pharmacy audit may share such information with the pharmacy benefits manager and the plan sponsor, for which such pharmacy audit is being conducted.

(4) No entity conducting a pharmacy audit shall compensate, directly or indirectly, any of its employees or any contractor such entity contracts with to conduct a pharmacy audit, based on the amount claimed or the actual amount recouped from the pharmacy being audited.

(c) (1) Any entity conducting a pharmacy audit shall:

(A) Provide the pharmacy being audited at least ten business days' prior written notice before conducting a pharmacy audit;

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(B) Provide the pharmacy being audited with a masked list of prescriptions to assist the pharmacy to prepare for the pharmacy audit. A list is considered masked if the last two numbers of a prescription are marked with an "X";

(C) Not initiate or schedule a pharmacy audit during the first five business days of any month for any pharmacy that averages in excess of six hundred prescriptions filled per week, without the express consent of the pharmacy;

(D) Make all determinations regarding the validity of a prescription or other record consistent with sections 20-612 to 20-623, inclusive, of the general statutes or as specified in federal risk management programs;

(E) Accept paper or electronic signature logs that document the delivery of prescription drug and device and pharmacist services to a health plan beneficiary or such beneficiary's agent; and

(F) Provide to the representative of the pharmacy, prior to leaving the pharmacy at the conclusion of an on-site portion of a pharmacy audit, a complete list of records reviewed.

(2) Any pharmacy audit that involves clinical judgment shall be conducted by or in consultation with a licensed pharmacist.

(3) No pharmacy audit shall cover (A) a period of more than twenty-four months after the date a claim was submitted by the pharmacy to the pharmacy benefits manager or plan sponsor unless a longer period is required by law, or (B) more than two hundred fifty prescriptions.

(d) (1) (A) Not later than sixty calendar days after an entity concludes a pharmacy audit and before such entity issues a final pharmacy audit report, such entity shall provide an initial pharmacy

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audit review to the pharmacy. The pharmacy may, within thirty calendar days after it receives such initial review, respond to the findings in such initial review.

(B) To validate the pharmacy record and delivery, a pharmacy may use authentic and verifiable statements or records, including, but not limited to, medication administration records of a nursing home, assisted living facility, hospital or health care provider with prescriptive authority.

(C) To validate claims in connection with prescriptions or changes in prescriptions, or refills of prescription drugs, a pharmacy may use any valid prescription, including, but not limited to, medication administration records, facsimiles, electronic prescriptions, electronically stored images of prescriptions, electronically created annotations or documented telephone calls from the prescribing health care provider or such provider's agent. Documentation of an oral prescription order that has been verified by the prescribing health care provider shall meet the provisions of this subparagraph for the initial audit review.

(D) No entity conducting a pharmacy audit may use extrapolation to calculate penalties or amounts to be charged back or recouped unless otherwise required by federal requirements or federal plans. No such entity shall include dispensing fees in the calculation of overpayments unless a prescription is considered a misfill. As used in this subparagraph, "misfill" means a prescription that was not dispensed, a prescription error, a prescription whereby the prescriber denied the authorization request or where an extra dispensing fee was charged.

(2) (A) Not later than sixty calendar days after any responses from the pharmacy under subdivision (1) of this subsection are received by the entity conducting the pharmacy audit or, if no such responses are

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received, after the entity concludes a pharmacy audit, such entity shall issue a final pharmacy audit report that takes into consideration any responses provided to such entity by the pharmacy.

(B) A pharmacy may appeal a final pharmacy audit report in accordance with the procedures established by the entity conducting the pharmacy audit.

(e) (1) No pharmacy shall be subject to charge-back or recoupment for a clerical or recordkeeping error in a required document or record, including a typographical error, scrivener's error or computer error, unless such error resulted in actual financial harm to the pharmacy benefits manager, plan sponsor or a plan beneficiary.

(2) No entity conducting a pharmacy audit or person acting on behalf of such entity shall charge-back or recoup, attempt to charge-back or recoup, or assess or collect penalties from a pharmacy until the time period to file an appeal of a final pharmacy audit report has passed or the appeals process has been exhausted, whichever is later. If an identified discrepancy in a pharmacy audit exceeds twenty-five thousand dollars, future payments to the pharmacy in excess of such amount may be withheld pending adjudication of an appeal. No interest shall accrue for any party during the audit period, beginning with the notice of the pharmacy audit and ending with the conclusion of the appeals process.

(f) The provisions of this section shall not apply to an audit of pharmacy records conducted when (1) fraud or other intentional or wilful misrepresentation is indicated by physical review or review of claims data or statements, or (2) other investigative methods indicate a pharmacy is or has been engaged in criminal wrongdoing, fraud or other intentional or wilful misrepresentation.

Sec. 2. Section 38a-479aaa of the general statutes is repealed and the

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following is substituted in lieu thereof (*Effective October 1, 2014*):

As used in this section and sections 38a-479bbb to 38a-479hhh, inclusive, as amended by this act, and section 1 of this act:

(1) "Commissioner" means the Insurance Commissioner;

(2) "Department" means the Insurance Department;

(3) "Drug" means drug, as defined in section 21a-92;

(4) "Person" means person, as defined in section 38a-1;

(5) "Pharmacist services" includes (A) drug therapy and other patient care services provided by a licensed pharmacist intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, and (B) education or intervention by a licensed pharmacist intended to arrest or slow a disease process;

(6) "Pharmacist" means an individual licensed to practice pharmacy under section 20-590, 20-591, 20-592 or 20-593, and who is thereby recognized as a health care provider by the state of Connecticut;

(7) "Pharmacy" means a place of business where drugs may be sold at retail and for which a pharmacy license has been issued to an applicant pursuant to section 20-594; and

(8) "Pharmacy benefits manager" or "manager" means any person that administers the prescription drug, prescription device, pharmacist services or prescription drug and device and pharmacist services portion of a health benefit plan on behalf of plan sponsors such as self-insured employers, insurance companies, labor unions and health care centers.

Sec. 3. Section 38a-479bbb of the general statutes is repealed and the

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following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) Except as provided in subsection (d) of this section, no person shall act as a pharmacy benefits manager in this state without first obtaining a certificate of registration from the commissioner.

(b) Any person seeking a certificate of registration shall apply to the commissioner, in writing, on a form provided by the commissioner. The application form shall state (1) the name, address, official position and professional qualifications of each individual responsible for the conduct of the affairs of the pharmacy benefits manager, including all members of the board of directors, board of trustees, executive committee, other governing board or committee, the principal officers in the case of a corporation, the partners or members in the case of a partnership or association and any other person who exercises control or influence over the affairs of the pharmacy benefits manager, and (2) the name and address of the applicant's agent for service of process in this state.

(c) Each application for a certificate of registration shall be accompanied by (1) a nonrefundable fee of fifty dollars, and (2) evidence of a surety bond in an amount equivalent to ten per cent of one month of claims in this state over a twelve-month average, except that such bond shall not be less than twenty-five thousand dollars or more than one million dollars.

(d) Any pharmacy benefits manager operating as a line of business or affiliate of a health insurer, health care center, hospital service corporation, medical service corporation or fraternal benefit society licensed in this state or any affiliate of such health insurer, health care center, hospital service corporation, medical service corporation or fraternal benefit society shall not be required to obtain a certificate of registration. Such health insurer, health care center, hospital service corporation, medical service corporation or fraternal benefit society

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shall notify the commissioner annually, in writing, on a form provided by the commissioner, that it is affiliated with or operating a business as a pharmacy benefits manager.

[(e) Any person acting as a pharmacy benefits manager on January 1, 2008, and required to obtain a certificate of registration under subsection (a) of this section, shall obtain a certificate of registration from the commissioner not later than April 1, 2008, in order to continue to do business in this state.]

Sec. 4. Section 38a-479eee of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

[The commissioner may conduct investigations and hold hearings on any matter under the provisions of sections 38a-479aaa to 38a-479hhh, inclusive. The commissioner may issue subpoenas, administer oaths, compel testimony and order the production of books, records and documents. If any person refuses to appear, to testify or to produce any book, record, paper or document when so ordered, upon application of the commissioner, a judge of the Superior Court may make such order as may be appropriate to aid in the enforcement of this section.] Upon written request from a pharmacy, a pharmacy benefits manager shall pay claims to such pharmacy by electronic funds transfer. Any such payments shall be made within the time periods specified under subparagraph (B) of subdivision (15) of section 38a-816.

Sec. 5. Section 38a-479hhh of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) The commissioner may conduct investigations and hold hearings on any matter under the provisions of sections 38a-479aaa to 38a-479hhh, inclusive, as amended by this act, and section 1 of this act. The commissioner may issue subpoenas, administer oaths, compel

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testimony and order the production of books, records and documents. If any person refuses to appear, to testify or to produce any book, record, paper or document when so ordered, upon application of the commissioner, a judge of the Superior Court may make such order as may be appropriate to aid in the enforcement of this section.

(b) Any person aggrieved by an order or decision of the commissioner under sections 38a-479aaa to 38a-479hhh, inclusive, as amended by this act, or section 1 of this act may appeal therefrom in accordance with the provisions of section 4-183.

Approved June 12, 2014