

STATE OF NEW YORK

6733

2017-2018 Regular Sessions

IN ASSEMBLY

March 16, 2017

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to audits of pharmacies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section
2 280-c to read as follows:

3 § 280-c. Pharmacy audits by pharmacy benefit managers. 1. Defi-
4 nitions. As used in this section, the following terms shall have the
5 following meanings:

6 (a) "Pharmacy benefit manager" shall have the same meaning as in
7 section two hundred eighty-a of this article.

8 (b) "Pharmacy" shall mean a pharmacy that has contracted with a phar-
9 macy benefit manager for the provision of pharmacy services.

10 2. When conducting an audit of a pharmacy's records, a pharmacy bene-
11 fit manager shall:

12 (a) not conduct an on-site audit of a pharmacy at any time during the
13 first three calendar days of a month;

14 (b) notify the pharmacy or its contracting agent no later than fifteen
15 days before the date of initial on-site audit. Such notification to the
16 pharmacy or its contracting agent shall be in writing delivered either
17 (i) by mail or common carrier, return receipt requested, or (ii) elec-
18 tronically with electronic receipt confirmation, addressed to the super-
19 vising pharmacist of record and pharmacy corporate office where applica-
20 ble, at least fifteen days before the date of an initial on-site audit;

21 (c) limit the audit period to twenty-four months after the date a
22 claim is submitted to or adjudicated by the pharmacy benefit manager;

23 (d) include in the written advance notice of an on-site audit the list
24 of specific prescription numbers to be included in the audit that may or
25 may not include the final two digits of the prescription numbers;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (e) use the written and verifiable records of a hospital, physician or
2 other authorized practitioner, which are transmitted by any means of
3 communication, to validate the pharmacy records in accordance with state
4 and federal law;

5 (f) limit the number of prescriptions audited to no more than one
6 hundred randomly selected in a twelve-month period, except in cases of
7 fraud;

8 (g) provide the pharmacy or its contracting agent with a copy of the
9 preliminary audit report within forty-five days after the conclusion of
10 the audit;

11 (h) be allowed to conduct a follow-up audit on-site if a remote or
12 desk audit reveals the necessity for a review of additional claims;

13 (i) in the case of invoice audits, accept as validation invoices from
14 any wholesaler registered with the department of education from which
15 the pharmacy has purchased prescription drugs or, in the case of durable
16 medical equipment or sickroom supplies, invoices from an authorized
17 distributor other than a wholesaler;

18 (j) provide the pharmacy or its contracting agent with the ability to
19 provide documentation to address a discrepancy or audit finding,
20 provided that such documentation must be received by the pharmacy bene-
21 fit manager no later than the forty-fifth day after the preliminary
22 audit report was provided to the pharmacy or its contracting agent. The
23 pharmacy benefit manager shall consider a reasonable request from the
24 pharmacy for an extension of time to submit documentation to address or
25 correct any findings in the report; and

26 (k) provide the pharmacy or its contracting agent with the final audit
27 report no later than sixty days after the initial audit report was
28 provided to the pharmacy or its contracting agent.

29 3. Any claim that was retroactively denied for a clerical error, typo-
30 graphical error, scrivener's error or computer error shall be paid if
31 the prescription was properly and correctly dispensed, unless a pattern
32 of such errors exists, fraudulent billing is alleged or the error
33 results in actual financial loss to the entity. A clerical error is an
34 error that does not result in actual financial harm to the covered enti-
35 ty or consumer and does not include the dispensing of an incorrect dose,
36 amount or type of medication or dispensing a prescription drug to the
37 wrong person.

38 4. This section shall not apply to:

39 (a) audits in which suspected fraudulent activity or other intentional
40 or willful misrepresentation is evidenced by a physical review, review
41 of claims data or statements, or other investigative methods; or

42 (b) audits of claims paid for by federally funded programs; or

43 (c) concurrent reviews or desk audits that occur within three business
44 days of transmission of a claim and where no chargeback or recoupment is
45 demanded.

46 § 2. This act shall take effect on the sixtieth day after it shall
47 have become a law.