S T A T E O F N E W Y O R K

7150

I N S E N A T E

March 31, 2016

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed 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:

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

S 280-B. PHARMACY AUDITS BY PHARMACY BENEFIT MANAGERS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "PHARMACY BENEFIT MANAGER" SHALL HAVE THE SAME MEANING AS IN SECTION TWO HUNDRED EIGHTY-A OF THIS ARTICLE.

(B) "PHARMACY" SHALL MEAN A PHARMACY THAT HAS CONTRACTED WITH A PHARMACY BENEFIT MANAGER FOR THE PROVISION OF PHARMACY SERVICES.

2. WHEN CONDUCTING AN AUDIT OF A PHARMACY'S RECORDS, A PHARMACY BENEFIT MANAGER SHALL:

(A) NOT CONDUCT AN ON-SITE AUDIT OF A PHARMACY AT ANY TIME DURING THE FIRST THREE CALENDAR DAYS OF A MONTH;

(B) NOTIFY THE PHARMACY OR ITS CONTRACTING AGENT NO LATER THAN SEVEN DAYS BEFORE THE DATE OF INITIAL ON-SITE AUDIT;

(C) LIMIT THE AUDIT PERIOD TO TWENTY-FOUR MONTHS AFTER THE DATE A CLAIM IS SUBMITTED TO OR ADJUDICATED BY THE PHARMACY BENEFIT MANAGER;

(D) USE THE WRITTEN AND VERIFIABLE RECORDS OF A HOSPITAL, PHYSICIAN OR OTHER AUTHORIZED PRACTITIONER, WHICH ARE TRANSMITTED BY ANY MEANS OF COMMUNICATION, TO VALIDATE THE PHARMACY RECORDS IN ACCORDANCE WITH STATE AND FEDERAL LAW;

(E) PROVIDE THE PHARMACY OR ITS CONTRACTING AGENT WITH A COPY OF THE PRELIMINARY AUDIT REPORT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE CONCLUSION OF THE AUDIT;

(F) PROVIDE THE PHARMACY OR ITS CONTRACTING AGENT WITH THE ABILITY TO PROVIDE DOCUMENTATION TO ADDRESS A DISCREPANCY OR AUDIT FINDING, PROVIDED THAT SUCH DOCUMENTATION MUST BE RECEIVED BY THE PHARMACY BENE-

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

LBD14826-01-6

FIT MANAGER NO LATER THAN THE FIFTEENTH DAY AFTER THE PRELIMINARY AUDIT REPORT WAS PROVIDED TO THE PHARMACY OR ITS CONTRACTING AGENT; AND

(G) PROVIDE THE PHARMACY OR ITS CONTRACTING AGENT WITH THE FINAL AUDIT REPORT NO LATER THAN SIX MONTHS AFTER THE INITIAL AUDIT REPORT WAS PROVIDED TO THE PHARMACY OR ITS CONTRACTING AGENT.

3. ANY CLAIM THAT WAS RETROACTIVELY DENIED FOR A CLERICAL ERROR, TYPOGRAPHICAL ERROR, SCRIVENER'S ERROR OR COMPUTER ERROR SHALL BE PAID IF THE PRESCRIPTION WAS PROPERLY AND CORRECTLY DISPENSED, UNLESS A PATTERN OF SUCH ERRORS EXISTS, FRAUDULENT BILLING IS ALLEGED OR THE ERROR RESULTS IN ACTUAL FINANCIAL LOSS TO THE ENTITY.

4. THIS SECTION SHALL NOT APPLY TO:

(A) AUDITS IN WHICH SUSPECTED FRAUDULENT ACTIVITY OR OTHER INTENTIONAL OR WILLFUL MISREPRESENTATION IS EVIDENCED BY A PHYSICAL REVIEW, REVIEW OF CLAIMS DATA OR STATEMENTS, OR OTHER INVESTIGATIVE METHODS; OR

(B) AUDITS OF CLAIMS PAID FOR BY FEDERALLY FUNDED PROGRAMS; OR

(C) CONCURRENT REVIEWS OR DESK AUDITS THAT OCCUR WITHIN THREE BUSINESS DAYS OF TRANSMISSION OF A CLAIM AND WHERE NO CHARGEBACK OR RECOUPMENT IS DEMANDED.

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