

STATE OF NEW YORK

2763--A

2017-2018 Regular Sessions

IN SENATE

January 17, 2017

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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;

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

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

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

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

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

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

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

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

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

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

41 4. This section shall not apply to:

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

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

46 (c) concurrent reviews or desk audits that occur within three business
47 days of transmission of a claim and where no chargeback or recoupment is
48 demand.

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