SENATE . . . . . No. 2286

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

SENATE, Monday, July 21, 2014

The committee on Financial Services, to whom was referred the petition (accompanied by bill, Senate, No. 483) of Michael J. Rodrigues, Bruce E. Tarr, Gale D. Candaras, Robert M. Koczera and other members of the General Court for legislation to regulate pharmacy audits,- reports the accompanying bill (Senate, No. 2286).

For the committee,
Anthony W. Petruccelli

SENATE DOCKET, NO. FILED ON: 07/18/2014

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An Act regulating pharmacy audits.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The purpose of this Act is to establish minimum and uniform standards and criteria for the audit of pharmacy records by or on behalf of certain entities.

SECTION 2. The General Laws are hereby amended by inserting after chapter 175K the following chapter:-

Chapter 175L

Regulation of Pharmacy Audits

Section 1. Definitions.

For purposes of this chapter the following terms shall have the following meanings:

"Pharmacy Benefits Manager", any person or entity 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, and labor unions. A health benefit plan that does not contract

with a pharmacy benefit manager shall be considered a pharmacy benefit manager for the purposes of this chapter unless specifically exempted. The provisions of this chapter shall not apply to a public health care payer as defined in section 1 of chapter 118G.

"Commissioner", the commissioner of insurance or his designee.

Section 2. Audit Scope and Procedures.

(a) Notwithstanding any general or special law to the contrary, an audit of the records of a pharmacy conducted by a pharmacy benefit manager shall follow these procedures:

(1) The contract between a pharmacy and a pharmacy benefit manager shall identify and describe in detail the audit procedures.

(2) With the exception of an investigative fraud audit, the auditor shall give the pharmacy written notice at least two weeks prior to conducting the initial on-site audit for each audit cycle.

(3) A PBM cannot audit claims beyond 2 years prior to the date of audit.

(4) The auditor shall not interfere with the delivery of pharmacist services to a patient and shall make a reasonable effort to minimize the inconvenience and disruption to the pharmacy operations during the audit process.

(5) Any audit which involves clinical or professional judgment shall be conducted by or in consultation with a licensed pharmacist from any state.

(6) A finding of an overpayment or underpayment shall be based on the actual overpayment or underpayment. A statistically sound calculation for overpayment or

underpayment may be used to determine recoupment as part of a settlement as agreed to by the pharmacy.

(7) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity.

(8) An audit may not be initiated or scheduled during the first five calendar days of any month for any pharmacy that averages in excess of 600 prescriptions per week due to the high volume of prescriptions filled in the pharmacy during that time unless otherwise consented to by the pharmacy.

(9) A preliminary audit report shall be delivered to the pharmacy no later than 30 days after the conclusion of the audit.

(10) The audit report shall be signed and shall include the signature of any pharmacist participating in the audit.

(11) A pharmacy benefit manager shall not withhold payment to a pharmacy for reimbursement claims as a means to recoup money until after the final internal disposition of an audit, including the appeals process, unless fraud or misrepresentation is reasonably suspected or the discrepant amount exceeds $15,000.

(12) The auditor shall provide a copy of the final audit report within 30 days following the receipt of the signed preliminary audit report or the completion of the appeals process, as provided for in section 4, whichever is later, to the pharmacy and plan sponsor.

(13) The auditing company or agent may not receive payment based on a percentage of amount recovered or other financial incentive from the findings of audits.

Section 3. Appeal Process.

(a) Each auditor shall establish an appeals process under which a pharmacy may appeal findings in a preliminary audit;

(b) To appeal a finding, a pharmacy may use the records of a hospital, physician, or other authorized prescriber to validate the record with respect to orders or refills of prescription drugs or devices;

(c) A pharmacy shall have 30 days to address any discrepancy found during the preliminary audit.

(d) The National Council for Prescription Drug Programs ("NCPDP") or any other recognized national industry standard shall be used to evaluate claims submission and product size disputes.

(e) To the extent that an audit results in the identification of any clerical or record-keeping errors in a required document or record, the pharmacy shall not be subject to recoupment of funds by the PBM, provided the pharmacy can provide proof the patient received the medication billed to the plan via patient signature logs or other acceptable methods, unless there is financial harm to the plan or excessive errors in the normal course of business.

Section 4. The provisions of this chapter shall not apply to any audit or investigation that involves potential fraud, willful misrepresentation, or abuse, including, but not limited to, investigative audits or any other statutory or regulatory provision that authorizes investigations relating to insurance fraud.

Section 5. The commissioner may promulgate regulations to enforce the provisions of this chapter.

SECTION 3. The audit criteria set forth in this chapter shall apply only to audits conducted after January 1, 2015.