

HOUSE No. 4555

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, December 18, 2014.

The committee on Ways and Means to whom was referred the Senate Bill regulating pharmacy audits (Senate, No. 2286, amended), reports recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4555.

For the committee,

BRIAN S. DEMPSEY.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

By striking out all after the enacting clause and inserting in place thereof the following:-

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 175K the
2 following chapter:-

3 Chapter 175L

4 Regulation of Pharmacy Audits

5 Section 1. For the purposes of this chapter the following words shall have the following
6 meanings unless the context clearly requires otherwise:

7 "Commissioner", the commissioner of insurance.

8 "Pharmacy benefits manager", any person or entity that administers the prescription drug,
9 prescription device, pharmacist services or prescription drug and device and pharmacist services
10 portion of a health benefit plan on behalf of plan sponsors such as self-insured employers,
11 insurance companies, and labor unions. A health benefit plan that does not contract with a
12 pharmacy benefit manager shall be considered a pharmacy benefit manager for the purposes of
13 this chapter unless specifically exempted. This chapter shall not apply to a public health care
14 payer as defined in section 1 of chapter 12C.

15 Section 2. (a) An audit of the records of a pharmacy conducted by a pharmacy benefit
16 manager shall follow the following procedures:

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

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

22 (3) A pharmacy benefit manager shall not audit claims beyond 2 years prior to the
23 date of audit.

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

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

29 (6) A finding of an overpayment or underpayment shall be based on the actual
30 overpayment or underpayment. A statistically sound calculation for overpayment or
31 underpayment may be used to determine recoupment as part of a settlement as agreed to by the
32 pharmacy.

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

35 (8) An audit shall not be initiated or scheduled during the first 5 calendar days of
36 any month for any pharmacy that averages in excess of 600 prescriptions per week without the
37 pharmacy's consent.

38 (9) A preliminary audit report shall be delivered to the pharmacy, not later than 30
39 days after the conclusion of the audit.

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

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

46 (12) The auditor shall provide a copy of the final audit report within 30 days
47 following the receipt of the signed preliminary audit report or the completion of the appeals
48 process, as provided for in section 3, whichever is later, to the pharmacy and plan sponsor.

49 (13) The auditing company or agent shall not receive payment based upon a
50 percentage of the amount recovered or other financial incentive tied to the findings of the audit.

51 Section 3. (a) Each auditor shall establish an appeals process under which a pharmacy
52 may appeal findings in a preliminary audit.

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

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

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

61 (e) If an audit results in the identification of any clerical or record-keeping errors in a
62 required document or record, the pharmacy shall not be subject to recoupment of funds by the
63 pharmacy benefit manager, provided that the pharmacy may provide proof that the patient
64 received the medication billed to the plan via patient signature logs or other acceptable methods,
65 unless there is financial harm to the plan or errors, which exceed the normal course of business.

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

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

72 Section 6. The audit criteria set forth in this chapter shall only apply to audits conducted
73 after July 1, 2015.

74 SECTION 2. Sections 131 and 226 of chapter 139 of the acts of 2012 are hereby
75 repealed.