

SENATE No. 2286

The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen
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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. Petrucci

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

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

17 Section 2. Audit Scope and Procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 Section 3. Appeal Process.

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

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

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

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

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

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

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

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