

2018 -- S 2786

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO HEALTH AND SAFETY

Introduced By: Senator Erin Lynch Prata

Date Introduced: April 05, 2018

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 5-19.1 of the General Laws entitled "Pharmacies" is hereby
2 amended by adding thereto the following section:

3 **5-19.1-33. Audits.**

4 (a) When an on-site audit of the records of a pharmacy is conducted by a pharmacy
5 benefits manager, the audit must be conducted in accordance with the following criteria:

6 (1) A finding of overpayment or underpayment must be based on the actual overpayment
7 or underpayment, and not a projection based on the number of patients served having a similar
8 diagnosis, or on the number of similar orders or refills for similar drugs, unless the projected
9 overpayment or denial is a part of a settlement agreed to by the pharmacy or pharmacist.

10 (2) The auditor may not use extrapolation in calculating recoupments or penalties.

11 (3) Any audit that involves clinical or professional judgment must be conducted by, or in
12 consultation with a pharmacist.

13 (4) Each entity conducting an audit shall establish an appeals process under which a
14 pharmacy may appeal an unfavorable preliminary audit report to the entity.

15 (5) This section does not apply to any audit, review or investigation that is initiated based
16 on or involving suspected or alleged fraud, willful misrepresentation or abuse.

17 (6) Prior to an audit, the entity conducting an audit shall give the pharmacy thirty (30)
18 days' advance written notice of the audit, and the range of prescription numbers and the range of
19 dates included in the audit. Additionally, the number of prescriptions shall not exceed one

1 hundred (100) selected prescription claims which also includes all associated refills. Time allotted
2 must be adequate to collect all samples. Signature logs shall not exceed twenty-five (25).

3 (7) A pharmacy has the right to request mediation by a private mediator, agreed upon by
4 the pharmacy and the pharmacy benefits manager, to resolve any disagreements. A request for
5 mediation does not waive any existing rights of appeal available to a pharmacy under this section.

6 (8) A preliminary audit report must be delivered to the pharmacy within fifteen (15) days
7 after the conclusion of the audit. A pharmacy must be allowed at least thirty (30) days following
8 receipt of the preliminary audit to provide documentation to address any discrepancy found in the
9 audit. A final audit report must be delivered to the pharmacy within sixty (60) days after receipt
10 of the preliminary audit report or final appeal, whichever is later. A charge-back, recoupment or
11 other penalty may not be assessed until the appeal process provided by the pharmacy benefits
12 manager has been exhausted and the final report issued. Except as provided by state or federal
13 law, audit information may not be shared. Auditors may have access only to previous audit
14 reports on a particular pharmacy conducted by that same entity. Auditors may initiate a desk audit
15 prior to an on-site audit unless otherwise specified in the law.

16 (9) Contracted auditors cannot be paid based on the findings within an audit.

17 (10) Scanned images of all prescriptions including all scheduled controlled substances are
18 allowed to be used by the pharmacist for an audit. Verbally received prescriptions must be
19 accepted and applicable for desk, on-site and follow up appeal documentation.

20 (11) Any clerical error, typographical error, scrivener's error or computer error regarding
21 a document or record required under the Medicaid program does not constitute a willful violation,
22 and is not subject to criminal penalties without proof of intent to commit fraud.

23 (12) Pharmacists are allowed at minimum one opportunity to reschedule with the auditor
24 if the scheduled audit presents a scheduling conflict for the pharmacist.

25 (13) The period covered by an audit may not exceed one year.

26 SECTION 2. Title 27 of the General Laws entitled "INSURANCE" is hereby amended
27 by adding thereto the following chapter:

28 CHAPTER 1.3

29 HEALTH INSURER ANNUAL REPORTING

30 **27-1.3-1. Pharmacy benefit manager transparency.**

31 (a) Health insurers with a minimum of two thousand (2,000) Rhode Island lives covered
32 at the end of the preceding year, or who offer insurance through the Rhode Island health benefit
33 exchange, shall annually report the following information to the department of health, in plain
34 language, as an addendum to the health insurer's annual statement:

- 1 (1) The health insurer's state of domicile and the total number of states in which the
2 insurer operates;
- 3 (2) The total number of Rhode Island lives covered by the health insurer;
- 4 (3) The total number of claims submitted to the health insurer;
- 5 (4) The total number of claims denied by the health insurer;
- 6 (5) The total number of denials of service by the health insurer at the preauthorization
7 level, including:
 - 8 (i) The total number of denials of service at the preauthorization level appealed to the
9 health insurer at the first-level grievance and, of those, the total number overturned;
 - 10 (ii) The total number of denials of service at the preauthorization level appealed to the
11 health insurer at any second-level grievance and, of those, the total number overturned; and
 - 12 (iii) The total number of denials of service at the preauthorization level for which external
13 review was sought and, of those, the total number overturned;
- 14 (6) The total number of adverse benefit determinations made by the health insurer,
15 including:
 - 16 (i) The total number of adverse benefit determinations appealed to the health insurer at
17 the first-level grievance and, of those, the total number overturned;
 - 18 (ii) The total number of adverse benefit determinations appealed to the health insurer at
19 any second-level grievance and, of those, the total number overturned;
 - 20 (iii) The total number of adverse benefit determinations for which external review was
21 sought and, of those, the total number overturned;
- 22 (7) The total number of claims denied by the health insurer because the service was
23 experimental, investigational, an off-label use of a drug, was not medically necessary, involved
24 access to a provider that is inconsistent with the limitations imposed by the plan, or was subject to
25 a preexisting condition exclusion;
- 26 (8) The total number of claims denied by the health insurer as duplicate claims, as coding
27 errors, or for services or providers not covered;
- 28 (9) The titles and salaries of all corporate officers and board members during the
29 preceding year, and the bonuses and compensatory benefits of all corporate officers and board
30 members during the preceding year;
- 31 (10) The health insurer's marketing and advertising expenses during the preceding year;
- 32 (11) The health insurer's federal and Rhode Island-specific lobbying expenses during the
33 preceding year;
- 34 (12) The amount and recipient of each political contribution made by the health insurer

1 during the preceding year;

2 (13) The amount and recipient of dues paid during the preceding year by the health
3 insurer to trade groups that engage in lobbying efforts, or that make political contributions;

4 (14) The health insurer's legal expenses related to claims or service denials during the
5 preceding year; and

6 (15) The amount and recipient of charitable contributions made by the health insurer
7 during the preceding year.

8 (b) Health insurers may indicate the extent of overlap or duplication in reporting the
9 information described in subsection (a) of this section.

10 (c) The department of health shall create a standardized form using terms with uniform,
11 industry-standard meanings for the purpose of collecting the information described in subsection
12 (a) of this section, and each health insurer shall use the standardized form for reporting the
13 required information as an addendum to its annual statement. To the extent possible, health
14 insurers shall report information specific to Rhode Island on the standardized form, and shall
15 indicate on the form where the reported information is not specific to Rhode Island.

16 (d) The department of health shall post on its website the standardized form to be
17 completed by each health insurer pursuant to this section, and shall post on the Rhode Island
18 health benefit exchange an electronic link to the standardized forms posted by the department of
19 health.

20 (e) The director of the department of health may issue such rules, regulations, and orders
21 as shall be necessary to carry out the provisions of this chapter.

22 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY

- 1 This act would establish audit requirements for pharmacy benefit managers, and would
- 2 also establish annual reporting requirements for health insurers.
- 3 This act would take effect upon passage.

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