

Amendment No. 1 to HB0786

Travis
Signature of Sponsor

AMEND Senate Bill No. 650*

House Bill No. 786

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 56-7-3103(a)(3), is amended by deleting the subdivision and substituting the following:

(3) Any clerical or recordkeeping error identified during an audit, such as a typographical error, scrivener's error, omission, or computer error, does not, in and of itself, constitute fraud or intentional misrepresentation and must not be the basis of a recoupment unless the error results in an actual overpayment to the pharmacy or the wrong medication being dispensed to the patient. Notwithstanding any other law to the contrary, no such claim is subject to criminal penalties without proof of intent to commit fraud;

SECTION 2. Tennessee Code Annotated, Section 56-7-3103(a)(7), is amended by deleting the subdivision and substituting the following:

(7) A pharmacist or pharmacy must be allowed the length of time described in the pharmacist's or pharmacy's contract or provider manual, whichever is applicable, which must not be less than thirty (30) days, following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit. A pharmacist or pharmacy may correct a clerical or recordkeeping error by submitting an amended claim during the designated time frame if the prescription was dispensed according to the requirements of state and federal law. If the pharmacist's or pharmacy's contract or provider manual does not specify the allowed length of time for the pharmacist or pharmacy to address any discrepancy found in the audit following receipt of the preliminary report, then that pharmacist or pharmacy must be allowed no

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less than thirty (30) days following receipt of the preliminary audit report to respond and produce documentation;

SECTION 3. Tennessee Code Annotated, Section 56-7-3103(a), is amended by adding the following as a new subdivision:

() Any recoupment related to clerical or recordkeeping errors must not include the cost of the drug or dispensed product, except in cases of the following:

(A) Fraud or other intentional and willful misrepresentation;

(B) Dispensing in excess of the pharmacy benefits contract established by the plan sponsor; or

(C) Prescriptions not filled in accordance with the prescriber's order.

SECTION 4. Tennessee Code Annotated, Title 56, Chapter 7, Part 31, is amended by adding the following as new sections:

56-7-3115.

A covered entity or pharmacy benefits manager shall not charge a pharmacist or a pharmacy a fee related to a claim unless it is apparent at the time of claim processing and is reported on the remittance advice of an adjudicated claim. This section does not prohibit a covered entity or pharmacy benefits manager from entering into an agreement with a pharmacy or pharmacist which includes prospective performance-based incentives and increases payment to pharmacies or pharmacists.

56-7-3116.

A covered entity or pharmacy benefits manager shall not include any term or condition in a contract with a pharmacy or pharmacist that requires a pharmacist to

dispense a drug or other product to a patient contrary to a pharmacist's professional judgment.

56-7-3117.

A covered entity or pharmacy benefits manager shall disclose to a pharmacy or pharmacist in its network, at least thirty (30) days before the date the change becomes effective, any material change to a contract provision that affects the terms of reimbursement, the process for verifying benefits and eligibility, the dispute resolution procedure, the procedure for verifying drugs included in the formulary, and the procedure for contract termination. Nothing in this section prohibits a covered entity or pharmacy benefits manager from taking action without notice against a pharmacy or pharmacist in its network for a fraudulent claim or service.

56-7-3118.

(a) Each contract between a covered entity or pharmacy benefits manager and a pharmacist or pharmacy must be mutually agreed upon and must outline the terms and conditions for the provision of pharmacy services.

(b) A covered entity or pharmacy benefits manager shall not cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

(c) Removal of a pharmacy or a pharmacist from the network of a covered entity or pharmacy benefits manager does not release the covered entity or pharmacy benefits manager from the obligation to make any payment due to the pharmacy or pharmacist for services that have been properly rendered prior to the pharmacy being removed from the network. Properly rendered services do not include any services related to a fraudulent claim or intentional misrepresentation.

(d) A covered entity or pharmacy benefits manager shall not engage in a pattern or practice of reimbursing pharmacies or pharmacists in this state less than the amount

that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same drug or dispensed product or service.

SECTION 5. This act shall take effect on July 1, 2019, the public welfare requiring it, and applies to agreements entered into, amended, or renewed on or after that date.