CHAPTER 159
SB 38 – FINAL VERSION

03/21/13 0871s
05/02/13 1772EBA

2013 SESSION

13-0988
10/04

SENATE BILL ***38***

AN ACT relative to pharmacy rights during an audit.

SPONSORS: Sen. Cataldo, Dist 6

COMMITTEE: Commerce

ANALYSIS

This bill establishes the rights and procedures for the conduct of audits of the records of pharmacies.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to pharmacy rights during an audit.

Be it Enacted by the Senate and House of Representatives in General Court convened:

159:1 New Subdivision; Pharmacy Rights During Audit. Amend RSA 318 by inserting after section 60 the following new subdivision:

Pharmacy Rights During Audit

318:61 Definition. In this subdivision, "responsible party" means the entity responsible for payment of claims for health care services other than the individual to whom the health care services were rendered or that individual's guardian or legal representative.

318:62 Pharmacy Rights During Audit. Notwithstanding any other provision of law, whenever a managed care company, insurance company, third-party payer, or any entity that represents a responsible party conducts an audit of the records of a pharmacy, the pharmacy has a right to all of the following:

I. To have at least 7 days' advance notice of the initial on-site audit for each audit cycle. A pharmacy that requests an additional 7 days prior to the commencement of an audit shall be granted 7 additional days.

II. To have any audit that involves clinical judgment be done with a pharmacist who is licensed and is employed or working under contract with the auditing entity.

III. Not to have clerical or record-keeping errors, including typographical errors, scrivener's errors, and computer errors, on a required document or record, in the absence of any other evidence, deemed fraudulent. This subdivision does not prohibit recoupment of fraudulent payments.

IV. If required under the terms of the contract, to have the auditing entity provide a pharmacy, upon request, all records related to the audit in an electronic format or contained in digital media.

V. To have the properly documented records of a hospital or any person authorized to prescribe controlled substances for the purpose of providing medical or pharmaceutical care for their patients transmitted by any means of communication in order to validate a pharmacy record with respect to a prescription or refill for a controlled substance or narcotic drug, in compliance with state laws.

VI. If an on-site audit is conducted for a reason other than an identified problem, the audit shall be limited to no more than 250 selected prescriptions and the third party plan or audit

company must provide a masked list of prescriptions to the pharmacy to assist in preparation. The list is considered masked if the last 2 numbers of the prescription are marked with an "X." This procedure allows the pharmacy to pull the book the audited prescription is in, however it does not allow the pharmacy to pull the specific prescription audited. Additionally, all of the invoices for actual dispensed prescriptions, with prices redacted, may be obtained from the pharmacy's wholesaler or distributor upon approval from the pharmacy.

VII. To be subject to no more than 2 audits in one calendar year, unless fraud or misrepresentation is reasonably suspected.

VIII. Except for cases of Food and Drug Administration regulation or drug manufacturer safety programs, to be free of recoupments based on any of the following unless defined within the billing requirements set forth in the pharmacy provider manual:

(a) Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the pharmacy board or by the provider manual or contract.

(b) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the board.

IX. To be audited under the same standards and parameters as other similarly situated pharmacies audited by the same entity.

X. To have the period covered by an audit limited to 24 months from the date a claim was submitted to, or adjudicated by, a managed care company, an insurance company, a third-party payer, or any entity that represents responsible parties, unless a longer period is permitted by a federal plan under federal law.

XI. Not to be subject to the initiation or scheduling of audits during the first 5 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 during that time and for patient care considerations, without the express consent of the pharmacy. The pharmacy shall cooperate with the auditor to establish an alternate date should the audit fall within the days excluded.

XII. Not to have the accounting practice of extrapolation used in calculating recoupments or penalties for audits, unless otherwise required by federal requirements or federal plans.

XIII. The auditor shall not include dispensing fees in the calculations of overpayments unless the prescription is considered a misfill. A misfill shall be defined as a prescription not dispensed, a medication error, a prescription whereby the prescriber denied authorization, or where an extra dispensing fee was charged.

XIV.(a) Auditors shall only have access to previous audit reports on a particular pharmacy if the previous audit was conducted by the same entity, except as required for compliance with state or federal law.

(b) Additionally, pharmacies subject to an audit may use the following records at the time of the audit to validate a claim for a prescription, refill, or change in a prescription:

(1) Electronic or physical copies of records of a health care facility, or a health care provider with prescribing authority.

(2) Any prescription that complies with state law.

318:63 Mandatory Appeals Process.

I. Each entity that conducts an audit of a pharmacy shall establish an appeals process under which a pharmacy may appeal an unfavorable audit report to the entity.

II. If, following the appeal, the entity finds that an unfavorable audit report or any portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the unsubstantiated portion of the audit report without any further proceedings unless outlined in the contract.

III. Each entity conducting an audit shall provide a copy, if required under contractual terms, of the audit findings to the plan sponsor after completion of any appeals process.

318:64 Pharmacy Audit Recoupments.

I. Recoupments of any disputed funds shall occur only after final internal disposition of an audit, including the appeals process, unless fraud or misrepresentation is reasonably suspected or the discrepant amount exceeds $10,000.

II. Recoupment on an audit shall be refunded to the responsible party as contractually agreed upon by the parties.

III. The entity conducting the audit may charge or assess the responsible party, directly or indirectly, based on amounts recouped if both of the following conditions are met:

(a) The responsible party and the entity conducting the audit have entered into a contract that explicitly states the percentage charge or assessment to the responsible party.

(b) A commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly, on amounts recouped.

318:65 Audit Information and Reports. An audit report shall be delivered to the pharmacy within 75 days, unless otherwise agreed to, after the conclusion of the audit. A pharmacy shall be allowed at least 30 days, unless otherwise agreed to, following receipt of the audit report to appeal any discrepancy found in the audit. A final audit report shall be delivered to the pharmacy within 90 days, unless otherwise agreed to, after receipt of the appeal. A charge-back, recoupment, or other penalty may not be assessed until the appeal process has been exhausted and the final report issued except as specified in RSA 318:64. Except as provided by state or federal law or contract, audit information may not be shared. Auditors may have access only to previous audit reports on a particular pharmacy conducted by that same entity.

318:66 Applicability. This subdivision shall not apply to any audit, review, or investigation that is based on suspected or alleged fraud, willful misrepresentation, or abuse. Nothing in this

subdivision shall apply to claims that were paid for in part or in whole by Medicare or Medicaid program funds.

159:2 Effective Date. This act shall take effect January 1, 2014.

Approved: June 28, 2013

Effective Date: January 1, 2014