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SENATE BILL NO. 876

Offered January 9, 2013

Prefiled January 4, 2013

A BILL to amend the Code of Virginia by adding in Chapter 33 of Title 54.1 an article numbered 5, consisting of sections numbered 54.1-3323 through 54.1-3326, relating to pharmacies; audit rights.

Patron—Puckett

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 33 of Title 54.1 an article numbered 5, consisting of sections numbered 54.1-3323 through 54.1-3326, as follows:

Article 5.

Pharmacy Audit Rights.

§ 54.1-3323. Declaration of pharmacy rights during audit.

A. As used in this article, unless the context requires a different meaning:

"Responsible party" means the entity responsible for payment of health care services other than (i) the individual to whom the health care services were rendered or (ii) the guardian or legal representative of the individual to whom the health care services were rendered.

B. 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 shall have the right:

1. To at least 14 days' advance notice of the initial onsite audit for each audit cycle;

2. To have any audit that involves clinical judgment be conducted in consultation with a pharmacist who is licensed and who is employed by or working under contract with the auditing entity;

3. To exclude clerical or recordkeeping errors, including typographical errors, scrivener's errors, or computer errors on a required document or record, in the absence of any other evidence, from documents or records deemed fraudulent. This subdivision shall not prohibit recoupment of fraudulent payments;

4. If provided 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 form or contained in digital media;

5. 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 its 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.

6. To receive from the auditing entity a projection of an overpayment or underpayment based on the number of patients served with a similar diagnosis, the number of similar prescription orders, or the number of refills for similar drugs. This subdivision does not prohibit recoupments of actual overpayments, unless the projection for overpayment or underpayment is part of a settlement by the pharmacy.

7. Prior to the initiation of an audit, if the audit is conducted for an identified problem, to a limitation of the audit to claims that are identified by prescription number.

8. If an audit is conducted for a reason other than described in subdivision 7, to a limitation of the audit to 100 prescriptions selected by the auditing entity.

9. If an audit reveals the necessity for a review of additional claims, to have the audit conducted onsite.

10. Except for audits initiated for the reason described in subdivision 7, to be subject to no more than one audit in each calendar year, unless fraud or misrepresentation is reasonably suspected.

11. Except for cases of U.S. Food and Drug Administration regulation or drug manufacturer safety programs, to be exempt from recoupments based on any of the following, unless defined within the billing requirements set forth in the pharmacy provider manual not inconsistent with Board regulations:

a. Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the Board; or

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

12. To be subject to recoupment only following the correction of a claim and only for amounts in excess of amounts payable under the corrected claim.

13. Except for Medicare claims, to be subject to reversals of approval for drug, prescriber, or

patient eligibility upon adjudication of a claim only in cases in which the pharmacy obtained the adjudication by fraud or misrepresentation of claim elements.

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

15. To have at least 30 days following receipt of the preliminary audit report to produce documentation to address any discrepancy found during an audit.

16. To have the period covered by an audit limited to 24 months from the date the 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.

17. To have no audit initiated during the first five calendar days of any month due to the high volume of prescriptions filled during that time 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.

18. To have the preliminary audit delivered to the pharmacy within 120 days after the conclusion of the audit.

19. To have a final audit report delivered to the pharmacy within 90 days after the end of the appeals process, as provided for in § 54.1-3324.

20. To not be subject to have the accounting practice of extrapolation used in calculating recoupments or penalties for audits, unless otherwise required by federal requirements or federal plans.

§ 54.1-3324. Appeals process.

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

B. 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 further proceedings.

C. 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 the appeals process.

§ 54.1-3325. Pharmacy audit recoupments.

A. Recoupments of any disputed funds shall occur only after final internal disposition of an audit, including the appeals process as set forth in § 54.1-3324, unless fraud or misrepresentation is reasonably suspected.

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

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

1. 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 and

2. No commission or other payment to an agent or employee of the entity conducting the audit is based, directly or indirectly, on amounts recouped.

§ 54.1-3326. Applicability.

This article shall not apply to any audit, review, or investigation that involves alleged Medicaid fraud, Medicaid abuse, insurance fraud, or other criminal fraud or misrepresentation.