House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 303

HOUSE BILL 2692

AN ACT

AMENDING TITLE 20, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 25; RELATING TO PHARMACY BENEFITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 20, Arizona Revised Statutes, is amended by adding chapter 25, to read:

CHAPTER 25

PHARMACY BENEFITS

ARTICLE 1. AUDITING

20-3321. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AUDITING ENTITY" MEANS ANY PERSON, COMPANY, GROUP OR PLAN WORKING ON BEHALF OF OR PURSUANT TO A CONTRACT WITH AN INSURER OR PHARMACY BENEFITS MANAGER FOR THE PURPOSES OF AUDITING PHARMACY DRUG CLAIMS ADJUDICATED BY PHARMACIES.

2. "CLERICAL ERRORS" MEANS A MINOR RECORDKEEPING OR TRANSCRIBING ERROR, INCLUDING TYPOGRAPHICAL ERRORS, SCRIVNER'S ERRORS OR COMPUTER ERRORS, IN A REQUIRED ELECTRONIC OR HARD COPY DOCUMENT, RECORD OR PRESCRIPTION ORDER IF BOTH OF THE FOLLOWING CRITERIA ARE MET:

(a) THE ERROR DID NOT RESULT IN ACTUAL FINANCIAL HARM TO AN ENTITY.

(b) THE ERROR DID NOT INVOLVE DISPENSING AN INCORRECT DOSE OR TYPE OF MEDICATION OR DISPENSING A PRESCRIPTION DRUG TO THE WRONG PERSON.

3. "DESKTOP AUDIT" MEANS AN AUDIT THAT IS CONDUCTED BY AN AUDITING ENTITY AT A LOCATION OTHER THAN THE LOCATION OF THE PHARMACIST OR PHARMACY. DESKTOP AUDIT INCLUDES AN AUDIT THAT IS PERFORMED AT THE OFFICES OF THE AUDITING ENTITY DURING WHICH THE PHARMACIST OR PHARMACY PROVIDES REQUESTED DOCUMENTS FOR REVIEW BY HARD COPY OR BY MICROFICHE, DISK OR OTHER ELECTRONIC MEDIA.

4. "IN-PHARMACY AUDIT" MEANS AN AUDIT THAT IS CONDUCTED BY AN AUDITING ENTITY AT THE PHYSICAL BUSINESS ADDRESS OF THE PHARMACY WHERE THE CLAIM WAS ADJUDICATED.

5. "INSURER" MEANS A DISABILITY INSURER, GROUP DISABILITY INSURER, BLANKET DISABILITY INSURER, HEALTH CARE SERVICES ORGANIZATION, HOSPITAL SERVICE CORPORATION, MEDICAL SERVICE CORPORATION OR HOSPITAL AND MEDICAL SERVICE CORPORATION.

6. "PHARMACIST" HAS THE SAME MEANING PRESCRIBED IN SECTION 32-1901.

7. "PHARMACY" HAS THE SAME MEANING PRESCRIBED IN SECTION 32-1901.

8. "PHARMACY BENEFITS MANAGER" MEANS A PERSON, BUSINESS OR OTHER ENTITY THAT, PURSUANT TO A CONTRACT OR UNDER AN EMPLOYMENT RELATIONSHIP WITH A CARRIER OR OTHER THIRD-PARTY PAYER, EITHER DIRECTLY OR THROUGH AN INTERMEDIARY MANAGES THE PRESCRIPTION DRUG COVERAGE PROVIDED BY THE CARRIER OR OTHER THIRD-PARTY PAYER, INCLUDING THE PROCESSING AND PAYMENT OF CLAIMS FOR PRESCRIPTION DRUGS, THE PERFORMANCE OF DRUG UTILIZATION REVIEW, THE PROCESSING OF DRUG PRIOR AUTHORIZATION REQUESTS, THE ADJUDICATION OF APPEALS OR GRIEVANCES RELATED TO PRESCRIPTION DRUG COVERAGE, CONTRACTING WITH NETWORK PHARMACIES AND CONTROLLING THE COST OF COVERED PRESCRIPTION DRUGS.

1 20-3322. Audit procedures; interest prohibition
2 A. THE FOLLOWING PROCEDURES APPLY TO AN AUDIT CONDUCTED BY AN AUDITING
3 ENTITY:
4 1. WHEN CONDUCTING AN IN-PHARMACY AUDIT AN AUDITING ENTITY SHALL:
5 (a) GIVE A PHARMACY AT LEAST FOURTEEN DAYS' WRITTEN NOTICE.
6 (b) NOT CONDUCT AN AUDIT DURING THE FIRST FIVE DAYS OF THE MONTH
7 UNLESS THE PHARMACY OTHERWISE CONSENTS.
8 (c) PROVIDE THE PHARMACY A LIST OF ITEMS TO BE AUDITED THAT PROVIDES
9 FOR IDENTIFICATION OF PRESCRIPTION NUMBER OR NUMBERS OR DATE RANGE THAT THE
10 AUDITING ENTITY IS SEEKING TO AUDIT.
11 (d) WHEN CONDUCTING AN IN-PHARMACY OR DESKTOP AUDIT, LIMIT THE AUDIT
12 TO CLAIMS THAT MAY NOT EXCEED TWO YEARS FROM THE DATE THAT THE CLAIM WAS
13 ADJUDICATED BY THE PHARMACY BENEFITS MANAGER.
14 2. AN IN-PHARMACY AUDIT OR DESKTOP AUDIT THAT INVOLVES CLINICAL OR
15 PROFESSIONAL JUDGMENT SHALL BE CONDUCTED BY OR IN CONSULTATION WITH A
16 PHARMACIST.
17 3. THE PHARMACY MAY USE THE RECORDS OF A HOSPITAL, PHYSICIAN OR OTHER
18 AUTHORIZED PRACTITIONER TO VALIDATE THE PHARMACY RECORDS. THE VALIDATED
19 RECORDS MAY BE OBTAINED VIA ELECTRONIC METHODS, FAX, PHONE OR WRITTEN
20 PRESCRIPTION ORDERS AND DO NOT HAVE TO BE THE ORIGINAL HARD COPY PRESCRIPTION
21 ORDER.
22 4. EACH PHARMACY SHALL BE AUDITED UNDER THE SAME STANDARDS AND
23 PARAMETERS AS OTHER SIMILARLY SITUATED PHARMACIES IN THIS STATE.
24 B. WHEN CONDUCTING AN IN-PHARMACY AUDIT OR DESKTOP AUDIT, AN AUDITING
25 ENTITY SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:
26 1. THE AUDITING ENTITY SHALL BASE A FINDING OF OVERPAYMENT OR
27 UNDERPAYMENT ON THE ACTUAL OVERPAYMENT OR UNDERPAYMENT AND NOT ON A
28 PROJECTION BASED ON THE NUMBER OF PATIENTS SERVED WHO HAVE SIMILAR DIAGNOSES
29 OR ON THE NUMBER OF SIMILAR ORDERS OR REFILLS FOR SIMILAR DRUGS, UNLESS
30 REQUIRED BY FEDERAL OR STATE LAW.
31 2. THE AUDITING ENTITY MAY NOT RECOUP MONIES FROM THE PHARMACY FOR ANY
32 CLERICAL ERRORS IDENTIFIED IN AN AUDIT.
33 3. ANY FINDING OF AN OVERPAYMENT MAY NOT INCLUDE THE DISPENSING FEE
34 AMOUNT UNLESS ANY OF THE FOLLOWING CRITERIA ARE MET:
35 (a) A PRESCRIPTION WAS NOT RECEIVED BY THE PATIENT OR THE PATIENT'S
36 DESIGNEE.
37 (b) THE PRESCRIBER DENIED AUTHORIZATION.
38 (c) THE PRESCRIPTION DISPENSED WAS A MEDICATION ERROR BY THE PHARMACY.
39 (d) THE IDENTIFIED OVERPAYMENT IS BASED SOLELY ON AN EXTRA DISPENSING
40 FEE.
41 C. INTEREST MAY NOT ACCRUE DURING THE AUDIT PERIOD.

1 20-3323. Audit reports
2 A. THE AUDITING ENTITY MUST DELIVER A PRELIMINARY AUDIT REPORT TO THE
3 PHARMACY WITHIN SIXTY DAYS AFTER THE CONCLUSION OF THE AUDIT.
4 B. A PHARMACY IS ALLOWED AT LEAST THIRTY DAYS AFTER RECEIPT OF THE
5 PRELIMINARY AUDIT TO PROVIDE DOCUMENTATION TO ADDRESS ANY DISCREPANCY FOUND
6 IN THE AUDIT.
7 C. EACH AUDITING ENTITY SHALL ESTABLISH AND MAKE AVAILABLE TO NETWORK
8 PHARMACIES A WRITTEN APPEALS PROCESS THAT SHALL INCLUDE A PROCESS TO APPEAL,
9 INVESTIGATE AND RESOLVE DISPUTES REGARDING FINAL AUDIT FINDINGS. A PHARMACY
10 SHALL HAVE AT LEAST THIRTY DAYS FROM THE DELIVERY OF THE FINAL AUDIT FINDINGS
11 TO APPEAL AN UNFAVORABLE AUDIT FINDING TO THE AUDITING ENTITY. THIS WRITTEN
12 APPEALS PROCESS SHALL BE INCLUDED IN ALL CONTRACTS BETWEEN A PHARMACY
13 BENEFITS MANAGER AND A NETWORK PHARMACY OR A PHARMACY BENEFITS MANAGER AND A
14 PHARMACY'S CONTRACTING REPRESENTATIVE.
15 D. EACH AUDITING ENTITY SHALL PROVIDE A TELEPHONE NUMBER AT WHICH A
16 NETWORK PHARMACY MAY CONTACT THE PHARMACY BENEFITS MANAGER AND SPEAK TO
17 SOMEONE WHO IS RESPONSIBLE FOR PROCESSING APPEALS.
18 E. THE AUDITING ENTITY MUST DELIVER A FINAL AUDIT REPORT TO THE
19 PHARMACY WITHIN NINETY DAYS AFTER RECEIPT OF THE PRELIMINARY AUDIT REPORT OR
20 FINAL APPEAL, WHICHEVER IS LATER.
21 F. CHARGEBACKS, RECOUPMENT OR OTHER PENALTIES MAY NOT BE ASSESSED
22 UNTIL THE APPEALS PROCESS HAS BEEN EXHAUSTED AND THE FINAL AUDIT REPORT HAS
23 BEEN ISSUED.
24 G. UNLESS OTHERWISE REQUIRED BY STATE OR FEDERAL LAW, AUDIT
25 INFORMATION MAY NOT BE SHARED WITH ANY ENTITY OTHER THAN THE INSURER ON WHOSE
26 BEHALF THE AUDIT WAS CONDUCTED. AUDITORS MAY HAVE ACCESS ONLY TO PREVIOUS
27 AUDIT REPORTS ON A PARTICULAR PHARMACY CONDUCTED BY THAT SAME AUDITING
28 ENTITY.
29 20-3324. Applicability
30 A. NOTWITHSTANDING ANY OTHER LAW, THIS ARTICLE APPLIES ONLY TO AUDITS
31 CONDUCTED OF PHARMACIES LOCATED IN THIS STATE.
32 B. THIS ARTICLE DOES NOT APPLY TO CLAIMS REVIEWS THAT ARE INITIATED
33 WITHIN THREE BUSINESS DAYS AFTER TRANSMISSION OF A CLAIM IN WHICH NO
34 CHARGEBACK OR RECOUPMENT IS DEMANDED.
35 C. THIS ARTICLE DOES NOT APPLY TO AN AUDIT CONDUCTED IN WHICH A
36 SUSPICION OF FRAUDULENT ACTIVITY OR OTHER INTENTIONAL AND WILFUL
37 MISREPRESENTATION IS EVIDENCED BY PHYSICAL REVIEW, REVIEW OF CLAIMS DATA,
38 STATEMENTS OR OTHER INVESTIGATIVE METHODS. THE REASON FOR AN AUDIT SPECIFIED
39 IN THIS SUBSECTION SHALL BE DOCUMENTED AND AVAILABLE ON REQUEST.
40 Sec. 2. Applicability
41 This act applies to contracts entered into, amended, extended or
42 renewed and audits initiated from and after December 31, 2016.

APPROVED BY THE GOVERNOR MAY 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2016.

Passed the House March 1, 20 16

by the following vote: 57 Ayes,

2 Nays, 1 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate May 7, 20 16

by the following vote: 24 Ayes,

2 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

9th day of May, 20 16

at 9:54 o'clock A. M.

Secretary to the Governor

Approved this 17th day of

May

at 1:14 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 17th day of May, 20 16

at 4:35 o'clock P M.

Secretary of State

H.B. 2692