

NOTE: The governor signed this measure on 4/8/2013.

An Act

HOUSE BILL 13-1221

BY REPRESENTATIVE(S) May, Joshi, Ginal, Hullinghorst, Schafer,
Young;
also SENATOR(S) Tochtrop, Crowder.

CONCERNING STANDARDS FOR THE AUDIT OF PHARMACIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 10-16-122.5 as follows:

10-16-122.5. Pharmacy benefit manager - audit of pharmacies.

(1) A PHARMACY BENEFIT MANAGER, A CARRIER, OR AN ENTITY ACTING ON BEHALF OF A PHARMACY BENEFIT MANAGER OR A CARRIER THAT AUDITS A PHARMACY SHALL:

(a) GIVE THE PHARMACY AT LEAST SEVEN DAYS' WRITTEN NOTICE PRIOR TO COMMENCING AN AUDIT;

(b) CONDUCT THE AUDIT BY OR IN CONSULTATION WITH A LICENSED PHARMACIST TO THE EXTENT THE AUDIT REQUIRES THE APPLICATION OF CLINICAL OR PROFESSIONAL JUDGMENT;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) NOT USE EXTRAPOLATION OR OTHER STATISTICAL EXPANSION TECHNIQUES IN CALCULATING THE AMOUNT OF A RECOUPMENT OR PENALTY RESULTING FROM AN AUDIT OF A PHARMACY;

(d) ALLOW THE PHARMACY TO PRODUCE ADDITIONAL CLAIMS DOCUMENTATION USING ANY COMMERCIALY REASONABLE METHOD, INCLUDING FACSIMILE, MAIL, OR ELECTRONIC CLAIMS SUBMISSION, IF AN AUDIT RESULTS IN THE DISPUTE OR DENIAL OF A CLAIM;

(e) ESTABLISH A WRITTEN APPEALS PROCESS THAT INCLUDES PROCEDURES TO ALLOW A PHARMACY TO APPEAL TO THE PHARMACY BENEFIT MANAGER OR THE CARRIER THE PRELIMINARY REPORTS RESULTING FROM THE AUDIT AND ANY RESULTING RECOUPMENT OR PENALTY; AND

(f) NOT SUBJECT A PHARMACY TO THE RECOUPMENT OF FUNDS WHEN AN AUDIT RESULTS IN THE IDENTIFICATION OF A CLERICAL ERROR IN A REQUIRED DOCUMENT OR RECORD UNLESS THE ERROR RESULTS IN ACTUAL FINANCIAL HARM TO THE PHARMACY BENEFIT MANAGER, A HEALTH BENEFIT PLAN PROVIDING PRESCRIPTION DRUG BENEFITS THAT ARE MANAGED BY THE PHARMACY BENEFIT MANAGER, OR A CONSUMER.

(2) A PHARMACY MAY USE VERIFIABLE STATEMENTS OR RECORDS, INCLUDING MEDICATION ADMINISTRATION RECORDS OF A NURSING HOME, ASSISTED LIVING FACILITY, HOSPITAL, PHYSICIAN, OR OTHER AUTHORIZED PRACTITIONER, TO VALIDATE THE PHARMACY RECORD AND DELIVERY.

(3) ANY LEGAL PRESCRIPTION MAY BE USED TO VALIDATE CLAIMS IN CONNECTION WITH PRESCRIPTIONS, REFILLS, OR CHANGES IN PRESCRIPTIONS, INCLUDING MEDICATION ADMINISTRATION RECORDS, FAXES, ELECTRONIC PRESCRIPTIONS, OR DOCUMENTED TELEPHONE CALLS FROM THE PRESCRIBER OR THE PRESCRIBER'S AGENT.

(4) THE TIME PERIOD COVERED BY AN AUDIT MAY NOT EXCEED TWENTY-FOUR MONTHS FROM THE DATE THAT THE PRESCRIPTION WAS SUBMITTED TO OR ADJUDICATED BY THE ENTITY, UNLESS A LONGER PERIOD IS REQUIRED BY STATE OR FEDERAL LAW.

(5) THE TIME PERIODS SPECIFIED ARE WAIVED FOR AUDITS OF PHARMACY RECORDS WHEN FRAUD OR OTHER INTENTIONAL OR WILLFUL MISREPRESENTATION IS INDICATED THROUGH REVIEW OF CLAIMS DATA,

STATEMENTS, PHYSICAL REVIEW, OR OTHER INVESTIGATIVE METHODS. THE PHARMACY BENEFIT MANAGER, CARRIER, OR ENTITY ACTING ON BEHALF OF THE PHARMACY BENEFIT MANAGER OR CARRIER SHALL DELIVER TO THE PHARMACY AT THE TIME OF THE AUDIT A WRITTEN OR VERBAL EXPLANATION OF THE INFORMATION THAT LED TO THE CONCLUSION THAT THERE IS AN INDICATION OF FRAUD OR OTHER INTENTIONAL OR WILLFUL MISREPRESENTATION. THE EXPLANATION IS NOT REQUIRED IF LAW ENFORCEMENT HAS INTERVENED DUE TO THE INDICATION OF FRAUD.

(6) AS USED IN THIS SECTION, "PHARMACY" INCLUDES ANY ENTITY AUTHORIZED UNDER ARTICLE 42.5 OF TITLE 12, C.R.S., TO DISPENSE PRESCRIPTION DRUGS.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO