



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1710

Introduced 2/15/2019, by Sen. Laura Ellman

SYNOPSIS AS INTRODUCED:

215 ILCS 5/512-11 new
215 ILCS 5/512-12 new
215 ILCS 5/512-13 new

Amends the Illinois Insurance Code. Provides that all entities providing prescription drug coverage shall permit and apply a prorated daily cost-sharing rate to prescriptions that are dispensed by a pharmacy for less than a 30-day supply if the prescriber or pharmacist indicates the fill or refill could be in the best interest of the patient or is for the purpose of synchronizing the patient's chronic medications. Provides that no entity providing prescription drug coverage shall deny coverage for the dispensing of any drug prescribed for the treatment of a chronic illness that is made in accordance with a plan among the insured, the prescriber, and a pharmacist to synchronize the refilling of multiple prescriptions for the insured. Provides that no entity providing prescription drug coverage shall use payment structures incorporating prorated dispensing fees determined by calculation of the days' supply of medication dispensed. Provides that dispensing fees shall be determined exclusively on the total number of prescriptions dispensed. Establishes criteria for an entity conducting audits (either on-site or remotely) of pharmacy records. Provides that the Department of Insurance and Director of Insurance shall have the authority to enforce the provisions of the Act and impose financial penalties. Effective January 1, 2020.

LRB101 10443 RAB 55549 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by adding
5 Sections 512-11, 512-12, and 512-13 as follows:

6 (215 ILCS 5/512-11 new)

7 Sec. 512-11. Medication synchronization. All entities
8 providing prescription drug coverage shall permit and apply a
9 prorated daily cost-sharing rate to prescriptions that are
10 dispensed by a pharmacy for less than a 30-day supply if the
11 prescriber or pharmacist indicates the fill or refill could be
12 in the best interest of the patient or is for the purpose of
13 synchronizing the patient's chronic medications.

14 No entity providing prescription drug coverage shall deny
15 coverage for the dispensing of any drug prescribed for the
16 treatment of a chronic illness that is made in accordance with
17 a plan among the insured, the prescriber, and a pharmacist to
18 synchronize the refilling of multiple prescriptions for the
19 insured.

20 No entity providing prescription drug coverage shall use
21 payment structures incorporating prorated dispensing fees
22 determined by calculation of the days' supply of medication
23 dispensed. Dispensing fees shall be determined exclusively on

1 the total number of prescriptions dispensed.

2 The provisions of this Section shall not apply to a
3 supplemental insurance policy, including a life care contract,
4 accident-only policy, specified-disease policy, hospital
5 policy providing a fixed daily benefit only, Medicare
6 supplement policy, long-term care policy, or short-term major
7 medical policy of 6 months or less in duration or any other
8 supplemental policy.

9 (215 ILCS 5/512-12 new)

10 Sec. 512-12. Audit of pharmacy records.

11 (a) Notwithstanding any other law, when an entity is
12 conducting a retrospective audit of the records of a pharmacy
13 for its reimbursements claims (on-site or remotely) or performs
14 concurrent daily reviews, the auditing entity must comply with
15 the following:

16 (1) The entity conducting the initial on-site audit
17 shall give the pharmacy and the pharmacy's corporate office
18 written notice at least 30 days before conducting the
19 initial on-site audit for each audit cycle and shall
20 disclose the specific prescriptions to be included in the
21 audit.

22 (2) Unless otherwise consented to by the pharmacy, an
23 audit shall not be initiated or scheduled during the first
24 7 calendar days of any month or the day before or after a
25 federal or State holiday due to the high volume of

1 prescriptions filled during that time.

2 (3) When an entity is conducting an on-site audit, it
3 shall not interfere with the delivery of pharmacist
4 services to a patient and shall utilize every effort to
5 minimize inconvenience and disruption to pharmacy
6 operations during the audit process. The on-site audit
7 shall not exceed 4 hours in duration and shall review no
8 more than 100 unique prescription numbers during an initial
9 audit.

10 (4) No entity shall conduct an on-site audit at a
11 particular pharmacy more than one time annually. However,
12 this paragraph (4) shall not apply when an entity must
13 return to a pharmacy to complete an audit already in
14 progress.

15 (5) The period covered by an audit shall not exceed 2
16 years from the date the initial prescription claim was
17 submitted to or adjudicated by an entity.

18 (6) Each pharmacy shall be audited under the same
19 auditing standards and parameters used for conducting
20 audits of other contracted network pharmacies under each
21 pharmacy network contract that a pharmacy benefits manager
22 or health plan utilizes in this State. Any documentation
23 and records required by an auditor during an audit shall be
24 of the same type as the documentation and records required
25 for other contracted network pharmacies under each
26 pharmacy provider network contract that a pharmacy

1 benefits manager or health plan utilizes in this State.

2 (7) Any audit that involves clinical or professional
3 judgment shall be conducted by or in consultation with a
4 pharmacist licensed under the Pharmacy Practice Act.

5 (8) Each audit shall be conducted by a field agent who
6 possesses the requisite expertise in pharmacy practice in
7 this State.

8 (9) Any unintentional clerical or record-keeping
9 error, such as a typographical error, scrivener's error, or
10 computer error, regarding a required document or record
11 shall not necessarily constitute fraud. These claims may be
12 subject to recoupment, but shall not subject a pharmacy to
13 criminal penalties without proof of intent to commit fraud.
14 In the case of errors which have no financial harm to the
15 patient or plan, the entity must not assess any
16 chargebacks.

17 (10) All audits shall be conducted in accordance with
18 generally accepted accounting principles, standards, and
19 procedures; and auditing principles, standards, and
20 procedures; and using standards and parameters established
21 by rule that are identical for all audits conducted.

22 (11) An entity conducting daily concurrent reviews,
23 either directly or on behalf of a pharmacy benefits
24 manager, must complete the concurrent reviews and allow
25 final processing for final claim adjudication within 3
26 business days or 5 calendar days, whichever is sooner,

1 after the initial adjudication effort for the claim.

2 (12) Prescriptions are considered valid prescriptions
3 if they are compliant with the Pharmacy Practice Act and
4 Illinois Controlled Substances Act and have been
5 positively adjudicated upon claim submission by the
6 entity. Plan restrictions should be addressed during the
7 claims adjudication process either through the rejection
8 of the claim or a rejection of the claim with direction to
9 obtain a prior authorization and may not be the basis for a
10 retrospective recoupment of a paid claim.

11 (13) A finding of an overpayment or underpayment must
12 be based on the actual overpayment or underpayment and may
13 not be a projection based on the number of patients served
14 having a similar diagnosis or on the number of similar
15 orders or refills for similar drugs.

16 (14) With the exception of overpayments, if a pharmacy
17 benefits manager approves a claim through adjudication,
18 the pharmacy benefits manager may not retroactively deny or
19 modify reimbursement based on information accompanying the
20 original claim or information available to the pharmacy
21 benefits manager at the time of adjudication, unless the
22 claim was fraudulent, the pharmacy or pharmacist had been
23 reimbursed for the claim previously, or the services
24 reimbursed were not rendered by the pharmacy or pharmacist.

25 (15) A pharmacy benefits manager may not require more
26 information to be written on a prescription than is

1 required by State or federal law. Nor may a pharmacy
2 benefits manager require more stringent records to
3 validate a prescription order than is required by State or
4 federal law.

5 (16) Electronic records, including electronic
6 beneficiary signature logs, electronic tracking of
7 prescriptions, electronic prescriber prescription
8 transmissions and imagery of hard copy prescriptions,
9 electronically scanned store, patient records maintained
10 at or accessible to the offices of an audited pharmacy's
11 central operations, and any other reasonably clear and
12 accurate electronic documentation shall be acceptable for
13 auditing under the same terms and conditions and for the
14 same purposes as their paper analogs.

15 If paper logs are used, auditors must look at least 14
16 days past the dispense date to check for patient pickup.

17 Point of sale electronic register data shall qualify as
18 proof of delivery to the patient.

19 (17) A pharmacy may use the records of a hospital,
20 physician, or other authorized practitioner of the healing
21 arts for drugs or medicinal supplies written or transmitted
22 by any means of communication for purposes of validating
23 the pharmacy record with respect to orders or refills of a
24 legend drug or other controlled substance.

25 (18) Validation of appropriate day's supply and drug
26 dosing must be based on manufacturer guidelines and

1 definitions or, in the case of topical products or titrated
2 products, the professional judgment of the pharmacist
3 based upon communication with the patient or prescriber.

4 (19) A pharmacy's usual and customary price for
5 compounded medications is considered the reimbursable cost
6 unless an alternate price is published in the provider
7 contract and signed by both parties.

8 (20) A pharmacy benefits manager may not require a
9 pharmacy to agree to recoupments deducted against future
10 remittances and shall invoice the pharmacy for payment if
11 the pharmacy elects. Recoupment may be deducted against
12 future remittances without mutual consent when the
13 pharmacy is considered delinquent in payment of the invoice
14 per the contractual arrangement.

15 (21) Interest shall not accrue during the audit period.

16 (22) Notwithstanding any other provision in this
17 subsection (a), the entity conducting the audit shall be
18 prohibited from using the accounting practice of
19 extrapolation in calculating recoupments or penalties for
20 audits. A finding of overpayment or underpayment must be
21 based on the actual overpayment or underpayment and not on
22 a projection based on the number of patients served having
23 a similar diagnosis or on the number of similar orders or
24 refills for similar drugs.

25 (23) A finding of an overpayment shall not include the
26 dispensing fee amount.

1 (24) The preliminary audit report shall be delivered by
2 the entity to the pharmacy and pharmacy corporate office
3 within 30 days, with reasonable extensions allowed, after
4 conclusion of the audit and shall contain individual claim
5 level information for any discrepancy found and total
6 dollar amount of claims subject to recovery, organized by
7 plan sponsor, identified by organization name, for which
8 each claim is associated.

9 (25) A pharmacy shall be allowed at least 30 days
10 following receipt of the preliminary audit report in which
11 to produce documentation to address any discrepancy found
12 during an audit or to file an appeal.

13 (26) A final audit report containing claim level
14 information for any discrepancy found and total dollar
15 amount of claims subject to recovery shall be delivered to
16 the pharmacy and pharmacy corporate office within 45 days
17 after the audited pharmacy's receipt of the preliminary
18 audit report if the audited pharmacy does not file an
19 appeal or offers no documentation to address a discrepancy
20 found during an audit, or within 60 days after the auditing
21 entity receives the audited pharmacy's appeal or
22 documentation to address a discrepancy. The final audit
23 results shall be reflected in the remittance advice at the
24 claim level.

25 (27) The entity shall establish an appeals process that
26 meets the following requirements:

1 (A) The National Council for Prescription Drug
2 Programs or any other recognized national industry
3 standard shall be used to evaluate claims submission
4 and product size disputes.

5 (B) Each entity conducting an audit shall
6 establish a written appeals process under which a
7 pharmacy may appeal an unfavorable preliminary audit
8 report to the entity.

9 (C) If, following the appeal, the entity finds that
10 an unfavorable audit report or any portion thereof is
11 unsubstantiated, the entity shall dismiss the audit
12 report or said portion without the necessity of any
13 further action.

14 (28) A pharmacy benefits manager may not recover
15 payment of claims from the pharmacy which is identified
16 through the audit process to be the responsibility of
17 another payer. The pharmacy benefits manager must
18 reconcile directly with the other payer for any moneys owed
19 without requiring the pharmacy to reverse and rebill the
20 original claim in the retail setting.

21 (29) Each entity conducting an audit shall provide a
22 copy of the final audit report, after completion of any
23 review process, to the plan sponsor and to the contracted
24 network pharmacy within 3 business days after its
25 completion by the entity.

26 (30) The full amount of any recoupment on an audit

1 shall be refunded to the plan sponsor. Written
2 documentation of the refund with the refund date and plan
3 sponsor's name and address shall be provided to the
4 contracted network pharmacy subjected to the audit
5 recoupment.

6 (31) Neither the agency conducting the audit nor its
7 agents shall receive payment based on a percentage of the
8 amount recovered. This Section does not prevent the entity
9 conducting the audit from charging or assessing the
10 responsible party, directly or indirectly, based on
11 amounts recouped if both of the following conditions are
12 met:

13 (A) the plan sponsor and the entity conducting the
14 audit have a contract that explicitly states the
15 percentage charge or assessment to the plan sponsor;
16 and

17 (B) a commission to an agent or employee of the
18 entity conducting the audit is not based, directly or
19 indirectly, on amounts recouped.

20 (32) The entity conducting the audit shall not base
21 compensation of any employees of the entity involved with
22 the audit process on a percentage of the amount recovered
23 or audit findings.

24 (b) Except as otherwise provided in subsection (a), all
25 recoupments from final audits of pharmacies are to be
26 considered property of the plan sponsor. The entity shall be

1 required to refund recoupments to each plan sponsor associated
2 with the audited claims.

3 (c) Recoupments of any disputed funds shall occur after
4 final internal disposition of the audit, including the appeals
5 process as set forth in subsection (d).

6 (d) Notwithstanding any other law, each entity conducting
7 an audit shall establish an appeals process under which a
8 pharmacy may appeal a preliminary audit report to the entity.

9 (e) This Section does not apply to any audit, review, or
10 investigation that involves allegations of fraud, willful
11 misrepresentation, or abuse.

12 (215 ILCS 5/512-13 new)

13 Sec. 512-13. Enforcement.

14 (a) Enforcement of this Article shall be the responsibility
15 of the Department and the Director.

16 (b) The Director shall have the authority to adopt any
17 rules necessary for the implementation and administration of
18 this Article.

19 (c) The Director shall take action or impose penalties to
20 bring non-complying entities into full compliance with this
21 Article. Any violation of this Article may subject a
22 non-complying entity to financial penalties not less than
23 \$1,000 per violation.

24 Section 99. Effective date. This Act takes effect January
25 1, 2020.