What You Need to Know About PBM Audit Reform

Background & Bill Passage
- Abusive, unreasonable audits detract from pharmacists’ ability to effectively operate their business and focus on patient care.
- HB 1358, which took effect Sept. 1, establishes fair and reasonable procedures for health plans and PBMs to abide by when conducting pharmacy audits.
- HB 1358 was authored by Rep. Todd Hunter and sponsored by Sen. Leticia Van de Putte. TPBC worked closely with both lawmakers to manage passage of the bill.
- TPBC drafted the bill and led tough negotiating sessions that preserved the bill’s core elements and won consensus support from Texas pharmacy groups and NCPA.

Applicability of Provisions
- The law applies to audits of commercial claims conducted by health plans and PBMs.
- It does not apply to audits of claims conducted by health plans and PBMs operating under Medicaid, Medicare, CHIP, TRICARE, workers’ compensation, or a self-funded health plan as defined by ERISA. Audit reform on such claims must occur at the federal level, and APRx/TPBC fully support comparable reforms.
- HB 1358 applies only to contracts between a pharmacy and a health plan or PBM (and audits conducted under those contracts) that are executed or renewed on or after September 1, 2013.

On-Site Audits
- A health plan/PBM must provide written notice at least 14 days in advance of an on-site audit, and must accommodate the pharmacy’s schedule to the greatest extent possible.
- No later than seven days after receiving notice, a pharmacy/pharmacist may request that the audit be rescheduled to a mutually convenient date. Reasonable requests must be granted.
- Unless the pharmacy consents in writing, a MCO or PBM may not schedule or conduct an on-site audit before the 14th day after the date the pharmacy receives notice; more than twice annually in connection with a particular payer; or during the first five calendar days of January and December.
- A health plan or PBM is not required to provide notice before conducting an audit in cases of suspected fraud or intentional misrepresentation.

Desk Audit Response
- A pharmacy may be required to submit documents in response to a desk audit not earlier than the 20th day after the date the health plan or PBM requests the documents.

Contractual Provisions
- A contract between a pharmacy and a health plan or PBM must state detailed audit procedures.
- Health plans and PBMs must notify pharmacies in writing of changes in audit procedures at least 60 days before the effective date of the changes.
- HB 1358 provisions cannot be waived, voided or nullified by contract.

Scope of Audit
- An audit of a claim must be completed on or before the one-year anniversary of the date the claim is received.
- The list of claims subject to audit must be identified only by prescription numbers or date range.
Audit sample size cannot exceed 300 if random sampling procedures are used to select claims for audit.

An audit involving clinical/professional judgment must be conducted in consult with a licensed pharmacist.

No audit representative of a health plan or PBM may enter the pharmacy area unescorted.

A pharmacy being audited may (1) validate a prescription, refill or change in a prescription with a prescription that complies with applicable federal and state laws; and (2) validate the delivery of a prescription with the written record(s) of a hospital, physician or other practitioner.

Recoupment cannot be based on the absence of non-required documentation or on an error that does not result in actual financial harm.

Extrapolation may not be used in completing an audit or in calculating the amount of a recoupment.

A dispensing fee may not be recovered as an overpayment unless the fee was: (1) a duplicate charge; (2) for a non-dispensed prescription, without prescriber authorization, to the wrong patient or with the wrong instructions; or (3) for the dispensing of the wrong drug.

Unintentional clerical or recordkeeping errors cannot be used as the basis of recoupment unless an error caused actual financial harm to a patient/enrollee, health plan or PBM. If the health plan or PBM alleges that the pharmacy committed fraud or intentional misrepresentation, it must state the allegation in the final audit report.

After an audit is initiated, a pharmacy may resubmit a claim if the submission deadline has not passed.

A health plan or PBM may access a pharmacy audit report only if it was prepared in connection with an audit by that health plan/PBM or if the audited pharmacy is suspected of fraud or intentional misrepresentation.

Compensation of those conducting an audit may not be tied to amounts recovered as a result of the audit.

**Audit Reporting**

At the end of an on-site or desk audit, the health plan/PBM must provide a summary of audit findings and allow the pharmacist to respond to questions and alleged discrepancies and comment on and clarify findings.

Within 60 days of the audit, the health plan/PBM must deliver a preliminary audit report that states the audit results and identifies any documentation required to resolved stated discrepancies.

A pharmacist/pharmacy has 30 days after receipt of the preliminary audit report to challenge findings or resolve any identified discrepancies.

The final audit report must be delivered no later than 120 days after the preliminary report. It must allow for remedies per law and Texas Department of Insurance regulations.

No recoupment can be made until after the final audit report.

**Enforcement & Assistance**

The provisions of HB 1358 are enforced by the Texas Department of Insurance. **If the provisions of the audit reform law are not being observed by a health plan and/or PBM, contact the TDI Ombudsman:**

Melissa Hield, Associate Commissioner
Melissa.hield@tdi.state.tx.us 512-322-4349

Learn about the official TDI complaint process and view other resources at the TDI Pharmacist Resource Page: [http://www.tdi.texas.gov/hprovider/pharmacy.html](http://www.tdi.texas.gov/hprovider/pharmacy.html).

**Contract for audit assistance services** such as those offered by APRx CAPS: [www.pharmauditassist.com](http://www.pharmauditassist.com)

You may also consider legal action if you cannot resolve your issues with an auditing health plan or PBM.