

[Insert Pharmacy Letterhead]

[Insert date]

[Insert "Via Email" or "Via Certified Mail, Return Receipt Requested"; this is to ensure there is a paper trail for your file related to this audit]

[Insert PBM / auditor name]

[Insert PBM / auditor mailing address or email address]

Re: Audit to occur on ***[Insert audit date]*** of ***[Insert pharmacy name]***

Dear Sir or Madam:

This correspondence is in response to your audit notification dated ***[Insert audit notification date]*** containing a request to perform ***[Insert a desk or an on-site]*** audit of the prescription records of ***[Insert pharmacy name]*** and scheduled to occur on ***[Insert audit date]***. I am writing to contest the basis of the audit and to request further information as to the scope of the prescription records that are subject to review pursuant to the audit.

I am contesting the basis of the audit due to the following applicable Texas Insurance Code provisions, which govern the prompt payment of prescription claims and health plan / pharmacy benefit manager (PBM) audits of pharmacists and pharmacies. Specifically, be advised that:

[Choose applicable sections of law as bulleted below, and delete inapplicable sections of law as per individual audit needs.]

- Sections 843.339, 843.340, 1301.104, and 1301.105 of the Texas Insurance Code require a deadline for action by insurers / plans and PBMs on prescription claims. Specifically, these statutes require that insurers or PBMs that affirmatively adjudicate pharmacy claims shall pay one hundred percent (100%, the total amount) of the claim through electronic funds transfer not later than the 18th day after the date on which the claim was affirmatively adjudicated (or 21 days for claims that are not electronically submitted). Further, these statutes state that if the insurer or PBM intends to audit a claim submitted by a provider, they must clearly indicate on the explanation of payment statement that the clean claim is being paid at one hundred percent (100%, the total amount) of the contracted rate, subject to completion of the audit. This audit is not in compliance with Sections 843.339, 843.340, 1301.104, and 1301.105 of the Texas Insurance Code and the pharmacy therefore rejects and opposes the audit.
- Section 1369.254(a) of the Texas Insurance Code provides that notice of an on-site audit shall provide the pharmacy reasonable notice and accommodate the pharmacy's schedule to the greatest extent possible. The notice must be in writing and sent by a means that allows tracking of delivery to the pharmacy no later than the fourteenth (14th) day before the date on which the on-site audit is scheduled to occur. The audit notification for this audit did not occur in compliance with Section 1369.254(a).
- Section 1369.254(b) of the Texas Insurance Code provides that not later than the seventh (7th) day after the date a pharmacy receives a notice, the pharmacy may request that an on-site audit be rescheduled to mutually convenient date and that request must be reasonably granted. In accordance with Section 1369.254(b), I request that the audit be rescheduled to a mutually agreeable date.
- Section 1369.254(c) of the Texas Insurance Code provides that unless a pharmacy consents in writing, an on-site audit may not be scheduled before the fourteenth (14th) date the pharmacy

receives notification, or more than twice annually in connection with a particular payor, or during the first five calendar days of January and December. The audit was not scheduled in compliance with Section 1369.254(c); therefore, I reject this on-site audit notification.

- Section 1369.254(e) of the Texas Insurance Code provides that a pharmacy may not be required to submit documents in response to a desk audit earlier than the twentieth (20th) day after the date a plan or PBM requests the documents. The desk audit notification is not in compliance with Section 1369.254(e); therefore, I reject this desk audit notification.
- Section 1369.254(f) of the Texas Insurance Code requires that a contract between a pharmacy and a plan or PBM must state detailed audit procedures and if any change is proposed to the audit procedures, a pharmacy must be notified in writing of the change no later than sixty days prior to the change. The audit procedures were not provided to me in my contract and I did not receive notice of any changes; this audit is not in compliance with Section 1369.254(f); therefore, I reject this audit notification.
- Section 1369.254(g) of the Texas Insurance Code provides that the list of claims subject to an on-site audit must be provided in the audit notification to a pharmacy and must identify the claims only by prescription numbers or a date range for prescriptions subject to the audit (the last two digits of the prescription numbers may be omitted). The audit notification did not identify the claims in this way; this audit is not in compliance with Section 1369.254(g); therefore, I reject this audit notification.
- Section 1369.254(h) of the Texas Insurance Code provides that if a plan or PBM in an on-site audit or desk audit applies random sampling procedures to select claims for audit, the sample size may not be greater than 300 individual prescription claims. The sample size exceeds 300; this audit is not in compliance with Section 1369.254(h) and the pharmacy therefore rejects the audit notification, and rejects, opposes, and appeals any audit findings not in compliance with this section.
- Section 1369.255 of the Texas Insurance Code provides that an audit of a claim must be completed on or before the one-year anniversary of the date the claim is received by the plan or PBM. The scope of this audit is beyond the one (1) year deadline; this audit is not in compliance with Section 1369.255, and the pharmacy therefore rejects the audit notification, and rejects, opposes, and appeals any audit findings not in compliance with this section.
- Section 1369.256 of the Texas Insurance Code requires that an on-site audit or a desk audit involving a pharmacist's clinical or professional judgment must be conducted in consultation with a licensed pharmacist. Please indicate if this audit involves our pharmacist's clinical or professional judgment, and if so, the method and means in which this audit will be conducted with a licensed pharmacist. If a licensed pharmacist will not be consulting, this audit is not in compliance with Section 1369.256, and the pharmacy therefore rejects, opposes, and appeals the audit findings.
- Section 1369.257 of the Texas Insurance Code provides that a plan or PBM that conducts an on-site audit may not enter the pharmacy area unless escorted by an individual authorized by the pharmacist or pharmacy. Please be advised that the pharmacy and I do not authorize any representative of the plan or PBM to enter the pharmacy area, and if an unpermitted entrance does occur, this audit is not in compliance with Section 1369.257, and the pharmacy therefore rejects, opposes, and appeals the audit findings.
- Section 1369.258 of the Texas Insurance Code provides that a pharmacy that is being audited may validate a prescription, a refill of a prescription, or a change in a prescription with a prescription that complies with applicable federal laws and regulations and state laws and rules contained in the Occupations Code, or validate a prescription with a written record of a hospital, physician or other

authorized practitioner of the healing arts. Please be advised that the pharmacy intends to exercise Section 1369.258 to validate any prescriptions as needed, and is providing enclosed documentation to exercise this provision.

- Section 1369.259(a) of the Texas Insurance Code provides that a plan or PBM may not calculate recoupment on the basis of an absence of documentation the pharmacy is not required by applicable federal laws and regulations and state laws and rules to maintain, or an error that does not result in actual financial harm to the patient or enrollee, the plan or the PBM. Please be advised that the pharmacy intends to exercise Section 1369.359(a) and the plan or PBM is prohibited from calculating a recoupment on this basis, and the pharmacy therefore rejects, opposes, and appeals the audit findings.
- Section 1369.259(b) of the Texas Insurance Code provides that a plan or PBM may not require extrapolation as a condition of participation in a contract or network for a pharmacy and that a plan or PBM may not use extrapolation to complete an audit of a pharmacy; further, the recoupment must be based on the actual overpayment or underpayment and may not be based on extrapolation. The audit findings utilize extrapolation and are not in compliance with Section 1369.259(b), and the pharmacy therefore rejects, opposes, and appeals the audit findings.
- Section 1369.259(d) of the Texas Insurance Code provides that a plan or PBM may not include a dispensing fee amount in the calculation of an overpayment unless the fee was a duplicate charge, the prescription for which the fee was charged was not dispensed or was dispensed without the prescriber's authorization or to the wrong patient or with the wrong instructions or the wrong drug was dispensed. The audit findings include a dispensing fee amount recoupment in violation of Section 1369.259(d), and the pharmacy therefore rejects, opposes, and appeals the audit findings.
- Section 1369.260(a)-(b) of the Texas Insurance Code provides that an unintentional clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error, found during an audit is not prima facie evidence of fraud or intentional misrepresentation and cannot be the basis of a recoupment unless the error results in actual financial harm to the patient or enrollee, plan or PBM; further, if the plan or PBM alleges that the pharmacy committed fraud or an intentional misrepresentation, the plan or PBM must state the allegation in the final audit report. The audit findings are not in compliance with Section 1369.260 and the pharmacy therefore rejects, opposes, and appeals the audit findings. .
- Section 1369.260(c) of the Texas Insurance Code provides that after an audit is initiated, a pharmacy may resubmit a claim if the deadline for submission has not expired; please be advised that the pharmacy intends to exercise Section 1369.260 and to resubmit the claims.
- Section 1369.262 of the Texas Insurance Code provides that an individual performing an audit must not directly or indirectly receive compensation based on a percentage of the amount recovered as a result of the audit. Please be advised that this pharmacy requests disclosure of the compensation for the individual performing the auditor and verification that the auditor is not receiving compensation based on a percentage of the amount recovered.
- Section 1369.263 of the Texas Insurance Code provides that at the conclusion of an audit, the plan or PBM shall provide to the pharmacy a summary of the audit findings and allow the pharmacy to respond to questions and alleged discrepancies, and comment on and clarify the findings. This section also provides that not later than the 60th day after the date the audit is concluded, the plan or PBM shall send by a means that allows tracking of delivery to the pharmacy a preliminary audit report stating the results of the audit and a list identifying documentation, if any, required to resolve discrepancies, if any, found as a result of the audit. Further, the pharmacy may, by providing documentation or otherwise, challenge a result or remedy a discrepancy stated in the preliminary audit report not later than the 30th day after the date the pharmacy receives the

report, and the pharmacy may request an extension to provide documentation supporting a challenge. The request shall be reasonably granted. This audit is not in compliance with Section 1369.263, and the pharmacy therefore rejects, opposes, and appeals the audit findings.

- Section 1369.264 of the Texas Insurance Code provides that not later than the 120th day after the date the pharmacy receives a preliminary audit report, the plan or PBM shall send by a means that allows tracking of a delivery to the pharmacy a final audit report that states the audit results after review of the documentation submitted by the pharmacy in response to the preliminary audit report, and the audit results, including a description of all alleged discrepancies and explanations for and the amount of recoupments claimed after consideration of the pharmacy's response to the preliminary audit report. The audit is not in compliance with Section 1369.264, and the pharmacy therefore rejects, opposes, and appeals the audit findings.
- Section 1369.266 of the Texas Insurance Code states that if plan or PBM may recoup from the pharmacy only an amount based on a final audit report and may not accrue or assess interest on an amount due until the date the pharmacy receives the final audit report. The audit is not in compliance with Section 1369.266, and the pharmacy therefore rejects, opposes, and appeals the audit findings and related recoupment / interest charged.

Also, be advised that Section 1369.267 of the Texas Insurance Code provides that the above reference provisions that I have cited may not be waived, voided, or nullified by contract, so any contract with a pharmacy may not circumvent these provisions. Further, be aware that Section 1369.268 of the Texas Insurance Code provides that the above referenced provisions that I have cited do not waive a remedy at law available to my pharmacy, should it ultimately be necessary for my pharmacy to enforce these provisions at law.

If it is determined after review of these aforementioned Texas Insurance Code provisions that some claims remain eligible for audit, I request a written list of the prescriptions in question prior to the audit as soon as possible and no later than fourteen (14) days prior to the audit in accordance with Section 1369.254 of the Texas Insurance Code. This will aid in the expediency of the audit as the pharmacy maintains several different sets of prescription files. Depending on the number of prescriptions in the audit, it can take a considerable amount of time to locate the records subject to review. A specific list of the records requested provided prior to the audit will aid in an efficient audit timeline for both parties.

Your prompt response to this correspondence is appreciated. You can reach me via ***[via email at _____ (insert email address) or certified mail, return receipt requested at _____ (insert mailing address)]; this is to ensure there is a paper trail for your file related to this audit].***

Sincerely,

/s/ [Insert Pharmacist in Charge / Pharmacy Owner Name]

cc:

American Pharmacies' General Counsel Amanda G. Fields (via email afields@aprx.org)