

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>.
- **Contract for audit assistance services** such as those offered by APRx CAPS: www.pharmauditassist.com
- **You may also consider legal action if you cannot resolve your issues** with an auditing health plan or PBM.