

STATE LAWS REFORMING THE PRACTICES OF PHARMACY BENEFIT MANAGERS (PBMS)

The following provides a summary of those states which have enacted legislation to reform the business practices of the Pharmacy Benefit Manager (PBM) industry. The summaries provided below do not provide a detailed description for all the provisions enacted in each of these state laws, but instead provide a generalized review of the reforms made by these laws. Any individual wishing to review the exact wording for any of these laws is encouraged to pull the actual Act. To further discuss any of the specifics within these state reforms please contact NCPA State Government Affairs staff at 703-600-1223.

States With Pharmacy Benefit Manager (PBM) Laws	
Fair & Uniform Pharmacy Audits	21 AL, AR, CA, FL, GA, IN, KS, KY, LA, MD, MN, MS, MO, NM, NC, ND, OK, SC, TN, UT, VT
PBM Regulation/Transparency	11 AR, IA, MD, MS, ND, RI, SD, TN, TX, UT, VT
Anti-Mandatory Mail Order	3 NY, PA and? (TX, CT, TN - AWP Legislation)
PBM Licensure (Insurance or Board of Pharmacy)	3 CT, GA, KS
Maximum Allowable Cost (MAC) Transparency	0
Total Laws Enacted	39

ALABAMA

Subject: Fair Pharmacy Audits

Act No. 2012-306

S.B. 383

Effective Date: 08/01/2012

- Pharmacy must be given two weeks' notice.
- PBM must provide a list of the material that is copied or removed during the audit
- Requires an audit involving clinical or professional judgment to be performed by or in consultation with a licensed pharmacist.
- Prohibits clerical or record-keeping errors from being considered fraud.
- Allows a pharmacy to submit amended claims to correct certain errors.
- Limits access to previous audit reports
- Allows a pharmacy to use hospital, physician or other authorized practitioner records for drugs or medicinal supplies to authenticate the pharmacy's record.
- PBM covers all costs associated with the audit, except for those associated with Alabama Medicaid if the claims sample exceeds 100 unique prescription copies.
- Establishes that a finding of an overpayment or an underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs, except that recoupment is based on the actual overpayment or underpayment of actual claims.
- Establishes that a finding of an overpayment does not include the cost of the drugs dispensed according to the prescriber's orders and cannot include a dispensing fee unless certain requirements are met.
- Only audit claims two years from the date submitted.
- Establishes that an audit may not be scheduled or performed during the first five days of the month

ARKANSAS

Subject: Fair Pharmacy Audit

Title 17, Chapter 92

Section 17-92-1201, et.seq.
Effective Date: 04/03/2007

- Pharmacy must be given at least one week advance notice of an audit.
- If clinical judgment is required the audit must be conducted in consultation with a pharmacist.
- Pharmacy may use records of a hospital, physician or other authorized practitioner to validate the pharmacy record.
- Recoupment of claims has to be based on actual overpayment unless it is part of a settlement with the pharmacy.
- Period covered by audit cannot exceed 24 months from the date the claim was submitted to or adjudicated by the entity.
- Unless consented to by the pharmacy, the audit cannot occur during the first 7 days of the month.
- Use of extrapolation audits for calculation of recoupments or penalties is prohibited.
- Copy of the final audit report to be provided to the plan sponsor

Arkansas
Subject: PBM Transparency
Code Title 9 Chapter 88 Sec. 801-804
Effective Date: 04/02/2009

- Requires PBMs to itemize by individual claim the amount actually paid to the pharmacy or pharmacist, the identity of the pharmacy, and an identifier of the pharmacist services

Arkansas
Subject: PBM Regulation
Public Act No. 1007
Effective Date: 04/01/2011

- Preserve the professional independence of a pharmacist/pharmacy.
- Defines exercise of professional judgment
- PBM shall not:
 - a) interfere with the exercise of professional responsibilities to a patient by a pharmacist and shall not take any retaliatory actions against a pharmacist/pharmacy because of the exercise of such responsibility;
 - b) terminate a contract with a pharmacy;
 - c) terminate, suspend, or otherwise limit the participation of a pharmacy/pharmacist in a PBM's provider network;
 - d) audit a pharmacy/pharmacist.
- PBM shall not engage in or interfere with the practice of medicine or intervene in the practice of medicine between a prescriber of medicine and the prescriber's patients.

CONNECTICUT
Subject: PBM Registration
Public Act No. 07-200
Effective Date: 01/01/2008

- PBM must obtain a certificate of registration from the Insurance Department.
- PBM must complete an application form which must include the name and address for an agent for service of process, pay a fee and provide evidence of a surety bond.
- PBM operating as a line of business or affiliate of a health insurer or other entity does not have to obtain registration but must provide annual notification to the Commissioner of status.
- Registration may be denied and a hearing process is provided for an Appeal.
- Commissioner has the authority to suspend, revoke or refuse to issue or renew for conduct of a character likely to mislead, deceive or defraud the public or the commissioner, unfair or deceptive business practices or nonpayment of renewal fee.

FLORIDA

Subject: Fair Pharmacy Audits
Florida Statutes Chapter 465
465.188 Medicaid audits of pharmacies
Effective Date: 01/16/2011

- Agency conducting the audit must give one week notice.
- Audit must be conducted by a pharmacist licensed in this state.
- Any clerical error, typographical error, scrivener's error or computer error regarding a document or record required under Medicaid program does not constitute a willful violation and is not subject to criminal penalties without proof of intent to commit fraud
- A pharmacist may use the physician's record or other order for drugs or medicinal supplies for purposes of validating the pharmacy record with respect to orders/refills.
- Pharmacist must be allowed at least ten days to produce documentation to address discrepancies.
- Period covered by an audit may not exceed one calendar year.
- Audit may not be scheduled during the first five days of any month.
- Audit report must be delivered to pharmacist within ninety days after conclusion of audit.
- Entity conducting the audit may not use the accounting practice of extrapolation.
- Provisions do not apply to investigative audits conducted by Medicaid Fraud Control Unit of the Department of Legal Affairs
- Provisions do not apply when Florida Agency for Health Care Administration has reliable evidence that claim that is the subject of the audit involved fraud under the Medicaid program.

GEORGIA

Subject: PBM Licensure
Title 26, Chapter 26-4.110.1
Effective Date: 05/22/2002

- Requires a PBM to be licensed as a pharmacy, with a few exceptions, if it provides the services of benefits that constitute the practice of pharmacy.
- Provides for license requirements and filing fees for PBMs. (Official Code of GA Ann. Title 33 Chapter 64 Effective Date: 06/02/2010)
- Requires a surety bond. (Official Code of GA Ann. Title 33 Chapter 64 Effective Date: 06/02/2010)
- If the PBM is licensed, then the Board can inspect its premises whether they are located within or outside the state.
- Provides that a pharmacy benefit manager shall not engage in the practice of medicine. (Official Code of GA Ann. Title 33 Chapter 64 Effective Date: 06/02/2010)
- Provides that pharmacy benefits managers shall not have to be licensed as an administrator. (Official Code of GA Ann. Title 33 Chapter 64 Effective Date: 06/02/2010)

Georgia

Subject: Fair Pharmacy Audits
Title 26, Chapter 4 – 26-4-118
Effective Date: 04/19/2006

- Pharmacy must be given notice at least one week prior to the conducting of the audit.
- Audit that requires clinical judgment must be conducted by or in consultation with a pharmacist.
- A finding of an overpayment or underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs; however recoupment of claims must be based on the actual overpayment or underpayment.
- Pharmacy must be allowed at least thirty days following the receipt of the audit report in which to produce documentation to address any discrepancy found during the audit.

- Period covered by the audit may not exceed two years from the date that the claim was submitted to or adjudicated by the entity.
- An audit may not be scheduled during the first seven calendar days of any month.
- The preliminary report must be delivered to the pharmacy within 120 days.
- Extrapolation is prohibited in calculating recoupments or penalties for audits.
- Each entity conducting an audit shall establish an appeals process
- Plan sponsor must be provided with a copy of the audit report
- Makes certain audit requirements applicable to pharmacy benefit managers. (Official Code of GA Ann. Title 33 Chapter 64 Effective Date: 06/02/2010)

INDIANA

Subject: Fair Pharmacy Audits

Indiana Code 25-26-22

Effective Date: 07/01/2012

- PBM must provide description of audit procedures in audit contract.
- Pharmacy must be given at least two weeks written notice in advance of an onsite audit.
- Auditor may not interfere with pharmacist-delivered services to patients and must minimize disruption of pharmacy operations.
- If clinical or professional judgment is required audit must be conducted by or in consultation with a pharmacist.
- Pharmacy may use records of a hospital, physician, or other health practitioners to validate a prescription for a legend drug.
- Period covered by audit cannot exceed twenty-four months from the date the claim was submitted to or adjudicated by PBM.
- PBM must permit pharmacy to electronically resubmit claims disputed by the audit.
- The audit cannot take place during the first seven days of the month.
- On-site auditor may not be paid based on percentage of amount recovered, resulting from the audit.
- A pharmacy may reschedule the audit within twenty four hours of receiving notice to a date no more than fourteen days after the date proposed by the auditor. If the auditor is unable to reschedule within fourteen days, the auditor will select and reschedule the audit for a date after the fourteen day period.
- If a clerical error is detected during audit, the pharmacy will be allowed to obtain a prescription that corrects the error from the prescribing physician. If errors results in overpayment to the pharmacy, the overpayment may be recouped by the third party payer.
- Preliminary audit report must be delivered within ninety days after the conclusion of the audit.
- Final report must be delivered within one hundred and twenty days after the preliminary audit is received by the pharmacy or if a final appeal is filed.
- Recoupment of claims must be based on actual overpayment or underpayment, not extrapolation – a final audit report must be distributed, and allowed thirty days to elapse from distribution, prior to recoupment of funds exceeding \$10,000 USD.
- An audit may not occur at a particular pharmacy location more than one time per calendar year for each third party payer.
- If the audit results in a finding of a particular problem at the pharmacy, the auditor may return within the calendar year.
- Section 11. IC 25-26-22-2 and Section 12. IC 25-26-22-9 does not apply to an audit conducted by the Medicaid, Medicare, or any other federal program.
- Written appeal procedure must provide for a period of at least thirty days for the pharmacy to file an appeal after receiving preliminary audit report.

IOWA

Subject: PBM Regulation
Title XIII Commerce
Chapter 510B.1 – 510B.9
Effective Date: 01/01/2008

- PBM must obtain a certificate as a third party administrator.
- PBM must perform its duties exercising good faith and fair dealing.
- PBM must notify the covered entity in writing of any conflicts.
- PBM cannot contact a covered individual without permission of the covered entity.
- PBM cannot require more stringent record keeping than that required by state or federal law or regulation.
- PBM must notify the pharmacy when it receives notice from a covered entity of a contract cancellation within 10 working days.
- Within three business days of a price increase notification by a manufacturer or supplier the PBM must adjust its payment to the pharmacy consistent with the price increase.
- Commissioner must enforce the provisions and adopt rules concerning timely payment of pharmacy claims and a process for adjudication of complaints and settlement of disputes between a PBM and a pharmacy related to auditing practices and termination of pharmacy agreements.
- Legislative Council is directed to establish an interim committee on PBMs to review transparency, disclosure, confidentiality protections, ability of covered entities to audit PBMs and appropriate remedies for covered entities to enforce the provisions in the Act.

KANSAS

Subject: Fair Pharmacy Audits
H.B. 2182 (2011)
Chapter 114, Section 1 through 6
Effective Date: 06/09/2011

- Requires seven days' written notice to a pharmacy prior to conducting an on-site initial audit.
- Requires audits that involve clinical or professional judgment to be conducted by or done in consultation with a licensed pharmacist
- Limits the period covered by an audit to two years from the date of claim submission to, or adjudication by.
- Allows pharmacies to request an extension of not more than seven days.
- Permits pharmacies to use the records of a hospital, physician or authorized practitioner to validate record.
- Allow the use of any legal prescription which complies with the regulations of the State Board of Pharmacy to validate claims for prescriptions, refills or changes in prescriptions.
- Requires similarly situated pharmacies to be audited under the same standards and parameters.
- Requires an auditing entity to establish a written appeals process.
- Overpayment and underpayment amounts will be based on actual amounts and not projections.
- Extrapolation cannot be used, unless required by state or federal contracts.
- Payments cannot be based on a percentage of the recovery amount, unless required by contracts.
- Accrual of interest during the audit period will not be permitted.
- Requires the preliminary audit report to be sent to the pharmacy within sixty days of the audit's conclusion and grants the pharmacy thirty days to provide documentation on any discrepancies.
- Requires the final report to be sent to the pharmacy within one hundred and twenty days of the preliminary report or appeal, whichever is later
- Requires recoupment of disputed funds to be sent after final internal disposition of the audit.
- Allows future payments to a pharmacy to be withheld if a discrepancy has been found that exceeds \$20,000.
- Requires the audit information to remain confidential unless disclosure is required by state or federal law and limits the auditor's access to previous audits to those performed by the same entity.
- Requires the auditing entity to provide the final report, including any disputed money, to the plan sponsor when requested and allows the pharmacy to provide a copy of the report to the Insurance Commissioner as long as the report does not violate provisions of HIPAA.

Kansas
Subject: PBM Registration
Chapter 154
Effective Date: 04/28/2006

- Requires pharmacy benefit managers to obtain a valid certificate of registration issued by the insurance commissioner in order to operate in the state.
- PBM must file an application form which includes:
 - e) Name, address, official position and professional qualification of each individual who is responsible for the conduct of the affairs of the PBM, including all members of the board of directors, board of trustees, executive committee, other governing board or committee, the principal officers in case of corporation, the partners or members in the case of a partnership or association and any other person who exercises control or influence over the affairs of the PBM.
 - f) Name and address of the applicant's agent for service of process in the state.
 - g) A nonrefundable application fee of \$140.
- Registration expires on March 31st of each year and the renewal fee is \$140.
- If the fee is not paid the registration may be revoked or suspended.
- PBMs must register within 90 days after the effective date of the act.
- Insurance commissioner may adopt rules.
- If a PBM acts without registering, it will be subject to a fine of \$500 per violation.

KENTUCKY

Subject: Fair Pharmacy Audits
KRS Chapter 304, Subtitle 17A, Sections 1-5
Effective Date: 03/24/2009

- Requires a pharmacy to be given at least thirty days written notice of an audit.
- Unless consented to by the pharmacy, the audit cannot take place during the first 7 days of the month.
- If clinical or professional judgment is required the audit must be conducted by or in consultation with a pharmacist.
- Allows the pharmacy to use records from a hospital, physician, or other authorized practitioner to validate the pharmacy record.
- Establishes that recoupment of claims must be based on actual overpayment unless it is part of a settlement with the pharmacy and the period covered by the audit cannot exceed two years from the date the claim was submitted unless federal law allows a longer period or there is evidence of fraud.
- Prohibits an auditing entity from requiring a pharmacy to keep records longer than two years or as required by federal/state law.
- Requires the preliminary audit report to be delivered within 120 days after the conclusion of the audit – final report must be delivered in six months.
- Following receipt of preliminary audit report, the pharmacy may take 30 days to produce documentation in response to discrepancies.
- Final audit report must provide claim-level detail of amounts and reasons for each claim recovery.
- Prohibits the auditor from being paid based on the amount recovered, resulting from the audit and prohibits disputed funds from being collected until the audit process, including appeals, is completed.
- Requires an exit interview to provide the pharmacy an opportunity to respond to questions, comment and clarify findings at the end of the audit – time of interview must be agreed to by the pharmacy and the pharmacy must be provided written instruction of the appeals process for the final audit report.
- If an auditor identifies any clerical/recordkeeping errors with a pharmacy, the pharmacy shall not be subject to recoupment of funds by the auditor unless proof of intent to commit fraud or an actual overpayment is made or the wrong medication is dispensed. Grants the pharmacy 30 days to correct the error if the med was dispensed according to state/federal requirements.

- In the case of overpayment the amount refunded shall be limited to the amount paid to the pharmacy minus the amount that should have been paid and shall not include the dispensing fee if the correct medication was dispensed and claims paid pursuant to KRS 304.17A-702.
- A managed care organization that provides Medicaid benefits pursuant to this chapter shall comply with the provisions of KRS 304.17A-740 to 304.17A-743.

Louisiana

Subject: Fair Pharmacy Audits

Act 856- RS 22:1856.1

Effective Date: 01/01/2013

- Prohibits an audit from taking place within the first five days of the month.
- An on-site audit may not be conducted at a pharmacy more than one time annually, unless an auditor has to return to complete an audit, or reasonable suspicion of fraud or illegal activity warrants such action.
- Pharmacies must be given 14 days' notice before an initial on-site audit is to take place.
- Audits, reviews, or investigations initiated on the bases of fraud or willful misrepresentation are not required to give notice before the on-site audit, review, or investigation is conducted.
- Clerical or record keeping errors shall not necessarily constitute fraud. No claim arising due to clerical or record keeping errors shall be subject to criminal penalties without proof of intent, but may be subject to recoupment.
- Audits requiring clinical judgment must be in consultation with a licensed pharmacist.
- Each pharmacy will be audited under the same standards and parameters for similarly situated pharmacies.
- Preliminary audit reports will be delivered within 90 days after an audit. A pharmacy may initiate appeals up to 30 days following the receipt of the preliminary audit report to address discrepancies of an on-site audit.
- Final audit reports will be delivered within 120 days of the receipt of the preliminary report or notice of appeal, whichever is later. A copy of the final report shall be available to plan sponsors or as required by contractual agreement.
- Interest on recoupment debts shall not be applied during any part of the audit process, including the appeal process, until the final report has been issued.
- Recoupment by the entity shall occur after final disposition of the audit including the appeals process. Interest may not be charged on recoupment during the appeal process.
- Recoupment shall not be based on documentation requirements in addition to or exceeding requirements for creating or maintaining documentation or requiring pharmacists perform duties exceeding those defined by the Louisiana Board of Pharmacy.
- A charge for an audit shall not be based directly or indirectly on amounts recouped unless both parties enter into explicit contractual agreement which states the assessment or percentage charge to the responsible party and that the commission of the entity agent is not based upon amounts recouped.
- Recoupment shall be based on actual financial harm or on the actual overpayment or underpayment.
- Calculations for overpayment shall not include dispensing fees except for provisions where the: prescription was not dispensed; prescriber denied authorization; dispensing error was made by the pharmacy; overpayment was based solely on the dispensing fee; or pharmacy provided insufficient documentation, noncompliant with program guidelines.
- Requires every auditing entity to establish an appeal process. The auditing entity shall dismiss the audit report or unsubstantiated portion of the report without further action if it finds any portion of the audit unfavorable.
- Unless contractually stated, pharmacies or payors may seek mediation to resolve disputes not related to quality assurance programs defined prior to reimbursement by the auditing entity, investigations of fraud, misrepresentation or abuse, federally funded activity preempted by law or rule, audits conducted in participation of the Louisiana Medicaid Program.

Maryland

Subject: PBM Regulation

Title 15, Subtitle 10B, Section 15-10B-20

Effective Date: 05/13/2003

- Requires the Insurance Department to conduct an examination of any PBM registered as a private review agent at least once every three years.
- Requires the Commissioner to issue a report based on the examinations.

Maryland

Subject: PBM Regulation, Fair Pharmacy Audits and Mail Order

Subtitle 16, Sections 15-1601 et seq

Effective Date: 10/01/2008

- Prior to entering into a contract, the PBM must inform the purchaser that the PBM may solicit and receive manufacturer payments, pass through or retain those payments depending on the contract terms, sell aggregate utilization information and share aggregate utilization information with other entities. PBM may require purchaser to sign a nondisclosure agreement prior to releasing information.
- PBM must offer to provide to the purchaser a report that contains net revenue and manufacturer payments. If a purchaser has a rebate sharing agreement, the PBM must offer to provide a report for each fiscal quarter and each fiscal year that contains information on the net revenues, prescription drug expenditures, manufacturer payments and rebates.
- PBM must disclose at the time of contracting with a pharmacist and at least 30 days before any contract change: the terms of reimbursement; process for verifying benefits and beneficiary eligibility; dispute resolution; and audit appeals process and procedures for verifying drugs included on the formularies used by the PBM.
- PBM may not schedule an onsite audit to begin during the first five calendar days of a month unless requested by the pharmacist.
- PBM must use a pharmacist if the audit requires clinical or professional judgment.
- PBM shall permit its auditors to enter the prescription area of a pharmacy only when accompanied/authorized by a member of the pharmacy staff. (Chapter 318, S.B. 903 (2012) Effective Date: 10/01/2012)
- PBM may allow pharmacy to use any prescription or authorized change to a prescription that meets the requirements of COMAR 10.34.20.01 to validate claims submitted for reimbursement for dispensing of original and refill prescriptions. (Chapter 318, S.B. 903 (2012) Effective Date: 10/01/2012)
- PBM must allow pharmacy/pharmacist to use hospital or physician records of a hospital or physician or other prescriber authorized by law that are written; or transmitted electronically or by any other means of communication authorized between the pharmacy and PBM. (Chapter 318, S.B. 903 (2012) Effective Date: 10/01/2012)
- PBM shall not disrupt the provision of services to the customers of a pharmacy during an audit. (Chapter 318, S.B. 903 (2012) Effective Date: 10/01/2012)
- All pharmacies in the network must be audited under the same standards and parameters.
- Audits are limited to claims submitted or adjudicated within the two year period immediately preceding the audit.
- With regard to PBM audits of pharmacies, clerical, record-keeping typographical or scrivener's errors shall not constitute fraud or grounds for recoupment of specified claims. (Chapter 568, S.B. 974 Effective Date: 5/19/2011)
- PBM may not share information from an audit with another PBM or use information from an audit conducted by another PBM. (Chapter 318, S.B. 903 (2012) Effective Date: 10/01/2012)

- Extrapolation audits are prohibited unless the pharmacist agrees to projected overpayments or denials as part of a settlement agreement.
- PBM must establish an internal appeals process for disputed audit claims.
- PBM must follow certain procedures for the timing of audit reports and payment of amounts due as a result of the audit.
- PBM may not request a therapeutic interchange unless certain criteria are met or the proposed interchange is for medical reasons that benefit the beneficiary or it will result in financial savings and benefits to the purchaser or the beneficiary.
- PBM must disclose certain information to the prescriber when the: PBM solicits the prescriber to make an interchange and if PBM receives payment from a manufacturer for making the interchange that payment must be disclosed to the prescriber at the time of the solicitation.
- PBM may not recoup by setoff any moneys for an overpayment or denial of a claim until the pharmacy has an opportunity to review the findings and 30 days have elapsed after the date of the final audit report has been delivered. (Chapter 318, S.B. 903 (2012) Effective Date: 10/01/2012)
- PBM may not recoup any money pending the outcome of an appeal. (Chapter 318, S.B. 903 (2012) Effective Date: 10/01/2012)
- If an interchange occurs, the PBM must provide certain information to the beneficiary.
- PBM must maintain a toll free number for prescribers, pharmacists and beneficiaries.
- PBM must register with the Insurance Commissioner and renew registration every two years. Allows the Commissioner to suspend, deny, revoke or refuse to renew a registration, PBM subject to administrative penalties.
- On the request of the Commissioner or the Commissioner's designee, a PBM must provide a copy of its audit procedures or internal appeals process. (Chapter 318, S.B. 903 (2012) Effective Date: 10/01/2012)
- PBM may not retroactively deny or modify reimbursement to a pharmacy for an approved claim unless the claim was fraudulent, the pharmacy has been reimbursed for the claim previously, the services reimbursed were not rendered by the pharmacy, or the claim caused monetary loss to the PBM, provided the PBM allowed the pharmacy a reasonable opportunity to remedy the cause of the monetary loss. (Chapter 318, S.B. 903 (2012) Effective Date: 10/01/2012)
- PBM may not ship, mail or deliver drugs through a non-resident pharmacy unless it holds a pharmacy permit from the Board of Pharmacy.
- Establishes requirements for a pharmacy and therapeutics (P&T) committee established by a PBM. Requires members of a P&T committee to sign a conflict of interest statement.
- A majority of the P&T committee members must be practicing physicians or pharmacist.
- PBM must have policies and procedures including disclosure requirements to address potential conflicts of interest and a process to evaluate medical and scientific evidence concerning the safety and effectiveness of prescription drugs.
- PBM may not require a pharmacist to participate on the P&T committee.

Minnesota

Subject: Fair Pharmacy Audits

Amendment to Minnesota Statute 151: Pharmacy

Sections [151.60] – [151.70]

Effective Date: 08/01/2012

- Audit terms and changes in a contract between a pharmacy and PBM, must be disclosed to a pharmacy 60 days prior to effective date.
- A pharmacy must be given notice of at least 14 days must be before an initial on-site audit is conducted.
- A licensed pharmacist must be consulted on audits with clinical or professional judgment.
- Period of audit covered may not exceed 24 months from the date the claim was submitted or adjudicated. If the entity uses random sampling for selecting claims the sample size must be appropriate for a statistically reliable sample.
- The auditing entity shall provide the pharmacy a masked list with prescription number or date range the entity is seeking to audit.

- Audits may not take place within the first five business days of the month unless consent from the pharmacy is given.
- Auditors are not permitted into the pharmacy area where patient specific information may be seen or heard unless escorted.
- Recoupment may not be deducted from future remittances until the appeals process is completed and the audit results are final.
- A PBM may not require information to be written on a prescription outside of what is required by state or federal law.
- Recoupment may be assessed for the following items not written on the prescription and they are not readily accessible to the auditor at the time of the audit:
 - Additional information required in the provider manual
 - Information is required by the FDA
 - Information is required by drug manufacture's product safety program
- The auditing company may not receive payment based on a percentage of the amount recovered. The auditing entity may charge the responsible party, directly or indirectly, based on amounts recouped if the plan sponsor and the entity conducting the audit has a contract and the commission to an agent or employee is based on amounts recouped.
- Usual and customary price for compounded medications is considered the reimbursable cost unless the pricing methodology is outlined in contract.
- Over or underpayment must be based on actual payment for and not a projection of the number of similar patients or medication orders. Extrapolation for recoupment or penalties may not be used unless required by state or federal regulations.
- Overpayment recoupment may not be for dispensing fees unless the prescription was not dispensed, the prescriber denied authorization, dispensing was a medication error by the pharmacy, or overpayment is solely based on a dispensing fee.
- A clerical or record-keeping error of a required document may not be recorded as fraud, however may be subject to recoupment. Errors that have no financial harm to patient or plan may not result in PBM charge backs.
- Interest may not accrue during the audit period beginning with the audit and ending with the final report.
- Medication record and delivery must be verifiable by appropriate statements as listed in the provider manual.
- Any legal prescription including medication administration records, faxes, e-prescriptions, or documented telephone calls meeting this chapters needs may be used to validate claims in connection with prescriptions, refills, or changes
- Requires an appeal process to be established by the conducting entity and must include appeals of all reports.
- Preliminary audit reports must be delivered within 60 days of the conclusion of the audit to the pharmacy. Grants the pharmacy 45 days to submit documentation addressing discrepancies of the audit.
- A final report must be delivered to the pharmacy no later than 120 days after receipt of preliminary or final appeal audit reports, whichever is later.
- Underpayments to pharmacies must be remitted within 45 days after the appeals process has been exhausted and the final audit has been issued.
- Audit reports, including information of claims and recouped monies, must be provided to plan sponsors when required by contract.
- Sections 151.2 to 151.67 do not apply to audits involving suspected fraud, willful misrepresentation, or abuse.
- Violations of 151.62 to 151.68 may be grounds for action but are not deemed misdemeanors as described in 151.29

Mississippi

Subject: PBM Regulation

Title 73 – Chapter 21– Sections 73- 21-151 – 73-21-159

Effective Date: 06/30/2006

- Requires PBMs to file financial statements with the state Insurance Department.
- PBMs must use a nationally recognized reference in pricing calculations when reimbursing pharmacies and must update that reference no less than every three business days.
- Clean claims filed electronically must be paid within 15 days (not later than 35 days if filed as a paper claim).
- The Board of Pharmacy shall monitor PBMs for compliance with the law and is authorized to subject PBMs to administrative penalties for noncompliance.
- Includes provision that grants state board of pharmacies jurisdiction over PBMs. (Chapter 546 Section 73-21-73 Effective Date: 04/26/2011)

Mississippi

Subject: Fair Pharmacy Audits

Title 73 – Chapter 21– Sections 73- 21-179; 73-21-183 and 73-21-191

Effective Date: 07/01/2008

- Pharmacy contract must identify and describe in detail the audit procedures.
- Entity conducting an onsite audit must give the pharmacy at least two weeks prior written notice before conducting an initial audit and the pharmacy shall have 14 days to respond to any desk audit requirements
- An audit that involves clinical and professional judgment must be conducted by or in consultation with a pharmacist.
- Entity conducting the onsite or desk audits may not interfere with the delivery of pharmacy services.
- Pharmacy may use records of a hospital, physician or other authorized practitioner to validate the pharmacy record
- Recoupment of claims has to be based on actual overpayment. A finding of an overpayment shall not include the dispensing fee amount unless the prescription was not dispensed.
- Period covered by the audit may not exceed two years from the date that the claim was submitted to or adjudicated by the entity.
- Prohibits an audit from taking place during the first five days of the month.
- An exit interview that provides the pharmacy an opportunity to respond to claims must be conducted at the end of an audit and the time mutually agreed to.
- Auditors shall only have access to that specific pharmacy's past audit reports and the auditor is not allowed to use info gained at one pharmacy to use against at a separate pharmacy.
- The parameters of an audit must comply with certain specified consumer-oriented parameters based on manufacturer listings or recommendations.
- An audit shall be limited to 100 prescriptions that have been randomly selected
- If a review of additional claims is needed it must be done on site
 - An audit may not be conducted on a pharmacy more than one time in any quarter
 - A recoupment shall not be based on: excess documentation or any additional professional duty that is more than required by the State Board of Pharmacy
 - Except for Medicare claims, the approval of drug, prescriber or patient eligibility shall not be reversed unless the pharmacy or pharmacist obtained the claim by fraud
 - A commission or other payment to an employee or agent of the auditor is not based on amounts recouped.
- Requires the preliminary audit report to be delivered within 120 days after the conclusion of the audit – final report must be delivered within 180 days.
 - Pharmacy has at least 30 days to review preliminary report. Audit report must be written.

- Recoupments of disputed funds or repayment of funds must occur after final internal disposition of the audit including the appeal, if any, process. If identified discrepancy exceeds \$25,000 future amounts in excess of that amount may be withheld pending finalization of the audit.
- Interest may not accrue during the audit period.
- Entity conducting the audit must establish a written appeals process and if either party is not satisfied with the appeal, that party may seek mediation.
- Plan sponsor must receive a copy of the final report.

Missouri

Subject: Fair Pharmacy Audits

Chapter 338 Pharmacists and Pharmacies Section 338.600

Effective Date: 08/2009

- Establishes standards for pharmacy audits by a managed care company, insurance company, third party payor or any entity that represents such groups.
- Requires notice to be provided to the pharmacy one-week notice prior to the audit.
- If clinical or professional judgment is required, the audit must be conducted by or in consultation with a licensed pharmacist.
- Any clerical error, record-keeping error, typographical error, or scrivener's error shall not constitute fraud or grounds for recoupment, so long as the prescription was legally dispensed. No claim arising under this provision shall be subject to criminal penalties without proof of intent to commit fraud. Prohibits the use of extrapolation.
- A pharmacy may use the records of a hospital, physician or other authorized practitioner of the healing arts for purposes of validating the pharmacy record.
- Electronically stored images of prescriptions, electronically created annotations shall be considered valid prescription records.
- Each pharmacy shall be audited under same standards/parameters.
- Period covered by audit shall not exceed two-year period unless previous finding of fraud.
- Prohibits an audit from being conducted during first three business days of any month.
- Recoupment shall only occur after final internal disposition of the audit, including the appeals process.
- Each entity conducting an audit shall establish an appeals process, lasting no longer than six months.
- Entity conducting audit shall provide copy of final audit report (after appeals) to plan sponsor.
- Section does not apply to investigative audit that involved probably fraud or willful misrepresentation or conducted by law enforcement agency.

New Mexico

Subject: Fair Pharmacy Audits

Chapter 61 – Article 11 61-11-18.2

Effective Date: 07/01/2007

- Requires a managed care company, insurance company, third-party payor or representative to conduct audits according to certain criteria.
- Must give pharmacy at least two weeks notice prior to conducting an initial on-site audit.
- An audit that requires clinical or professional judgment must be conducted by or in consultation with a pharmacist.
- Allows the pharmacy to use the records of a hospital, physician or other authorized practitioner for the purposes of validating the pharmacy record.
- A finding of overpayment or underpayment cannot be based on a projection and recoupment of claims must be based on actual overpayment or underpayment unless a statistically justifiable method of projection is part of an agreed settlement.
- Pharmacy must be allowed at least 21 days, with reasonable extensions, to produce documentation to address any discrepancies.

- Audit period cannot exceed two years, unless agreed by contract, from the date that the claim was submitted or adjudicated.
- Audit may not be initiated or scheduled during the first five calendar days of a month unless consented to by the pharmacy.
- Preliminary audit report must be delivered within 120 days, with reasonable extensions allowed, after the conclusion of the audit.
- Final report must be delivered within six months after receipt of the preliminary audit report or final appeal, whichever is later.
- Extrapolation audits are prohibited in calculating recoupments or penalties.
- Each entity conducting an audit must have an appeals process. If the discrepancy exceeds \$25,000 future payments to the pharmacy may be withheld pending finalization of the audit.
- Law does not apply to any investigative audit that involves fraud or willful misrepresentation.

New York

Subject: Anti-Mandatory Mail Order

2011 A.B. 5502B

Effective: 12/25/2011

- Prohibits health insurers from requiring a person who is covered from purchasing prescription drugs from a mail order pharmacy or pay a co-payment fee for purchases not made through a mail order pharmacy if the same fee is not charged for prescription drugs purchased through mail order

North Carolina

Subject: Fair Pharmacy Audits

Ch. SL 2011-375

Effective: 06/27/2011

- Requires 14 days' notice prior to an on-site audit.
- Requires any audit that involves clinical judgment to be done with a licensed pharmacist.
- Establishes that clerical, record-keeping, scrivener's, computer errors in absence of any other evidence shall not be deemed fraud.
- Establishes that recoupments may not be imposed for requirements that exceed those documentation requirements required by the state board of pharmacy.
- Auditors shall not be compensated "on commission" or based on the amount recouped.

North Dakota

Subject: PBM Regulation

Chapter 26.1-27

Effective Date: 08/01/2005

- Defines a PBM as an administrator and requires a PBM to be registered as an administrator.
- Requires disclosure of ownership interest in the PBM by an insurer or a pharmaceutical manufacturer.
- Requires the PBM to notify the Commissioner in writing within five business days of any material change in the PBM's ownership.
- Requires a PBM to comply with statutory provisions concerning substitution of one drug for another.
- PBM may not exclude an otherwise qualified pharmacy from its network if the pharmacy accepts the terms, conditions and reimbursement rates of the PBM's contract.
- PBM may not require a pharmacist or pharmacy to participate in one contract in order to participate in another contract.
- PBM must offer to the covered entity contracting options that must include: a transaction fee without a sharing of a payment received by the PBM, a combination of transaction fee and a sharing of the payment received by the PBM or a transaction fee based on the covered entity receiving all of the benefits of payments received by the PBM.

- Agreement between the PBM and the covered entity must include a provision allowing the covered entity to audit the PBM's books, accounts and records as necessary to confirm that the benefit of a payment received by the PBM is being shared as required by the contract.
- During an examination of a covered entity, the Commissioner may examine any contracts between the covered entity and the PBM in order to determine whether payments received from the PBM are being applied to reduce the covered entity's rates or have been distributed to covered individuals.
- Covered entity must disclose annually the benefits of the payments received and describe how the benefits received were applied towards reducing rates or distributed to covered individuals.
- Any information disclosed to the Commissioner is considered a trade secret.

North Dakota H.B. 1418
Subject: Fair Pharmacy Audits
Effective: 04/25/2011

- Provides comprehensive standards for PBM audits of pharmacies.
- This legislation is based upon NCPA Model State Audit Bill – NCPA also provided state association with backup advocacy documents.

Oklahoma
Subject: Fair Pharmacy Audits
Title 59, Section 356
Effective: 11/01/2008

- Pharmacy contract must identify and describe the audit procedures.
- Prescription claim documentation and record keeping requirements shall not exceed that required under State Pharmacy Practice Act. (59 O.S. Supp. 2010 Section 356.2-356.3 Oklahoma S.B. 673 (2011) Effective Date: 05/26/2011)
- Entities conducting audits shall provide pharmacy with at least 30 calendar days' notice. (59 O.S. Supp. 2010 Section 356.2-356.3 Oklahoma S.B. 673 (2011) Effective Date: 05/26/2011)
- An audit that involves clinical and professional judgment must be conducted by or in consultation with a licensed pharmacist.
- Entity conducting the onsite audit may not interfere with the delivery of pharmacy services.
- Allows a pharmacy to use records of a hospital, physician or other authorized practitioner to validate the pharmacy record.
- Entity conducting audit shall not audit more than 40 prescriptions per audit. (59 O.S. Supp. 2010 Section 356.2-356.3 Oklahoma S.B. 673 (2011) Effective Date: 05/26/2011)
- Recoupment of claims must be based on actual overpayment or underpayment; however a projection may be used as part of a settlement as agreed to by the pharmacy.
- A finding of an overpayment shall not include the dispensing fee amount unless the prescription was not dispensed or a physician denied authorization.
- Each pharmacy must be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity.
- Period covered by the audit may not exceed two years from the date that the claim was submitted to or adjudicated by the entity.
- Audit cannot take place during the first five days of the month.
- Must disclose to the plan sponsor any money recouped in the audit.
- Preliminary audit report must be delivered within 120 days after the conclusion of the audit - final report must be delivered within six months after receipt of the preliminary report or final appeal. Allows the pharmacy 60 days to review preliminary written report.
- The pharmacy shall have the right to submit amended claims to correct clerical or record keeping errors in lieu of recoupment provided the prescription was dispensed according to requirements under State Practice Act. (59 O.S. Supp. 2010 Section 356.2-356.3 Oklahoma S.B. 673 (2011) Effective Date: 05/26/2011)

- To the extent of audit results in i.d. of clerical errors, the pharmacy not subject to recoupment unless PBM can provide proof of intent to commit fraud or such error results in actual financial harm to PBM, health plan, or consumer. (59 O.S. Supp. 2010 Section 356.2-356.3 Oklahoma S.B. 673 (2011) Effective Date: 05/26/2011)
- Recoupments of disputed funds or repayment of funds must occur after the final internal disposition of the audit including the appeal, if any, process. If identified discrepancy exceeds \$25,000 future amounts in excess of that amount may be withheld pending finalization of the audit. Prohibits interest from accruing during the audit period.
- Entity conducting the audit must establish a written appeals process.
- Plan sponsor must receive a copy of the final report.
- Act does not apply to any audit which involves fraud, abuse or willful misrepresentation.
- Excludes any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error regarding a required document or record from being considered fraud; however, such claims may be subject to recoupment. No such claim shall be subject to criminal penalties without proof of intent to commit fraud.
- Entity conducting audit shall not be compensated based on percentage of amount recovered or projected to be recovered by the audit. (59 O.S. Supp. 2010 Section 356.2-356.3 Oklahoma S.B. 673 (2011) Effective Date: 05/26/2011)

Pennsylvania

Subject: Anti-Mandatory Mail Order

S.B. 201

Effective Date: 120 Days from 11/1/2012

- Prohibits a copayment, deductible, fee, limitation on benefits or other condition or requirement for the coverage of prescription drugs when not imposed on the covered individual when using a mail order pharmacy.
- Establishes that these rules only apply when a retail pharmacy agrees to accept from the insurer the same pricing, terms, conditions or requirements related to the cost of the prescriptions and the cost and quality of dispensing the prescriptions under an established mail order pharmacy.
- Requires the Legislative Budget and Finance Committee to conduct an evaluation of the impact of this legislation as it relates to prescription drugs at both independent and chain retail pharmacies and whether this legislation has a positive or negative impact on the cost of prescription drugs to both consumers and health care plans.

Rhode Island

Subject: PBM Regulation

Title 27 – Insurance Chapter 27-29.1

Effective Date: 07/05/2004

- Includes PBMs in the definition of third-party administrator and requires filing of an annual report.
- Annual report filed by third-party administrators with the department of business regulation shall include: contractual language that provides a complete description of the financial arrangements between the third-party administrator and each of the insurers covering benefit contracts delivered in Rhode Island.
- If the third-party administrator is owned by or affiliated with another entity or entities, it shall include an organization chart and brief description which shows the relationships among all affiliates within a holding company or otherwise affiliated.
- Report must be in a format required by the director and filed with the department as a public record.

South Carolina

Subject: Fair Pharmacy Audits

Title 38 Section 1, Chapter 71 of the 1976 Code

Effective Date: 01/01/2013

- The pharmacy shall have 14 days advance notice of initial audit for each cycle.
- No audit may be scheduled in the first five days of any month without the consent of the pharmacy.
- Audits involving clinical judgment must be conducted with a pharmacist licensed and employed by or under contract of the auditing entity.
- Clerical or record keeping errors on required documents shall not be considered fraud unless evidence proves otherwise. This provision does not prohibit recoupment of fraudulent payments.
- A pharmacy may request all records related to the audit in electronic format if stated in contract terms.
- The pharmacy has the choice to have a projection of the overpayment or underpayment based upon the number of patients served with a similar diagnosis or the number of similar prescription orders or refills for similar drugs. Recoupments of actual overpayments are not protected by this provision unless the projection for overpayment or underpayment is part of the settlement by the pharmacy.
- The pharmacy shall be free of recoupments based upon the following unless otherwise defined in billing, submission, or audit requirements set forth in the provider manual. This excludes requirements by the State Board of Pharmacy Regulations and cases of FDA regulation or manufacturer safety programs.
 - Documentation exceeding the requirements set forth by the State Board.
 - Requirements that the pharmacy or pharmacist performs duties in addition to or exceeding those prescribed by the State Board unless agreed to by contract with the auditing entity.
- The pharmacy may be subject to recoupment only following the correction of a claim and to have the recoupment limited to amounts paid in excess of amounts payable under the corrected claim if an error occurs. Errors include but aren't limited to wrong drug, strength, dose, or patient.
- The pharmacy has the right to reversals of approval, except for Medicare claims, for drug, prescriber, or patient eligibility upon adjudication only in cases in which the pharmacy obtained this by fraud or misrepresentation of claim elements.
- The pharmacy has the right to be audited under the same standards and parameters as other pharmacies of similar situation.
- A pharmacy has at least 30 days to file an appeal and produce documentation, from receipt of the preliminary audit report.
- Audits must be limited to 24 months from the date the claim was submitted to or adjudicated by an entity unless a longer period is permitted by federal law.
- A preliminary report shall be delivered within 120 days of the conclusion of the audit.
- A final report shall be delivered within 90 days of the end of appeals.
- Extrapolation is not permitted in calculating recoupments or penalties unless required by federal law.
- The auditing entity shall provide, upon request of the pharmacy, a masked list that provides a prescription number range the entity is seeking to audit. Each entity conducting an audit shall establish an appeals process for pharmacies to appeal an unfavorable result.
- If an entity finds an unfavorable audit report or any portion of the audit report is unsubstantiated, the entity shall dismiss said portion of the audit report.
- Each entity shall provide a copy, if required by the terms of contract with the responsible party, of the audit findings to the plan sponsor after final appeals.
- Recoupments of funds resulting from the audit shall occur after all processes of the audit, including appeals, unless fraud or misrepresentation is reasonably suspected.
- Audit recoupment must be refunded to the responsible party as contractually agreed by both parties involved in the audit.
- The entity conducting the audit may charge or assess the responsible party, directly or indirectly, based on amounts recouped if the responsible party and the entity conducting the audit enter a contract stating the

percentage charge or assessment to the responsible party, and commission or other payment to an agent of the entity is not based directly or indirectly on amounts recouped..

- Provisions of this article do not apply to claims that involve alleged insurance fraud or abuse, Medicare fraud or abuse, or other fraud or misrepresentation.
- This article does not apply to audits conducted on behalf of the DHHS in the performance of its duties in administering Medicaid under Titles 19 and 21 of the Social Security Act.

South Dakota

Subject: PBM Regulation

Chapter 58-29E

Effective Date: 03/09/2004

- Requires PBMs to be licensed as a third party administrator.
- Requires PBM to perform its duties by exercising good faith and fair dealing toward the covered entity.
- Gives the covered entity the option to request information from the PBM on rebate revenues and retrospective utilization discounts.
- Gives the covered entity the option to request information on the nature, type and amount of all other revenue received from a pharmaceutical manufacturer or labeler for programs that the covered entity offers to its enrollees.
- Prohibits a PBM from contacting a covered individual without express written permission of the covered entity.
- Provides that information disclosed to the covered entity shall be confidential and proprietary information; however insurance department may request information but it will be considered confidential and privileged and not open to public inspection or disclosure.
- Provides that the covered entity may audit the PBM's records as they relate to rebates and other information described in this Chapter.
- Prescription may be substituted if it is a lower priced generic or if the substitution is for medical reasons but PBM must obtain prior approval from the prescriber.
- Allows the Division of Insurance to promulgate rules.
- Applies to contracts entered into or renewed after June 30, 2004.

Tennessee

Subject: Fair Pharmacy Audits

Titles 56 and 63

Effective Date: 07/01/2007

- Requires at least two weeks prior written notice to the pharmacy before conducting the initial on-site audit.
- If clinical or professional judgment is required audit must be conducted in consultation with a pharmacist who has knowledge of the Tennessee Pharmacy Practice Act.
- Pharmacy may use records of a hospital, physician or other authorized practitioner to validate the pharmacy record.
- Unless consented to by the pharmacy, the audit cannot take place during the first seven days of the month due to high volume of prescriptions filled during that time.
- Requires the pharmacist to be given no less than 30 days following receipt of the audit report to produce documentation to address any discrepancy.
- PBM must establish an appeals process and provide the pharmacist a written explanation of the process.
- Use of extrapolation audits for calculation of recoupments or penalties is prohibited.
- Preliminary audit report must be delivered within 120 days and the final report must be delivered with six months after receipt of the preliminary audit report or final appeal, whichever is later.
- Period covered by an audit cannot exceed two years from the date the claim was submitted or adjudicated.
- Recoupment of any disputed funds cannot take place until after the final internal disposition of the audit including any appeal process

- If the PBM uses a nationally recognized reference to calculate reimbursement then the PBM must use the most current reference price or amount.
- Requires PBMs to provide timely updates to pharmacy product pricing files used to calculate prescription prices and reimburse pharmacies. Files must be updated no less than every three business days.
- Any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error, regarding a required document or record may not, in and of itself, constitute fraud; however, such claims may be subject to recoupment. Notwithstanding any other provision of law to the contrary, no such claim shall be subject to criminal penalties without proof of intent to commit fraud.

Tennessee

Subject: PBM Regulation
Title 56, Chap. 7 Sec. 3201-3205
Effective Date: 01/01/2010

- Specifies that when PBMs provide patients information regarding out-of-pocket costs, such as co-pay, for a prescription or service, they must provide the patient the actual reimbursement.
- Prohibits PBMs from restricting pharmacies from disclosing to patients the actual reimbursement for a particular prescription or covered service.

Texas

Subject: PBM Regulation and Mail Order
Chap. 2158, Subchapter H
Effective Date: 09/01/2009

- Requires state agencies to disclose information relating to amounts charged by PBMs for PBM services provided under prescription drug programs –information must be provided within 30 days of request.
- Provides for a study to evaluate how PBMs use prescription drug information to manage therapeutic drug interchange programs and other drug substitution recommendations.
- Provides that in awarding contracts to provide PBM services the board of trustees of the Employee Retirement System of Texas is not required to select the lowest bid but must meet certain criteria – includes, contract that must state board of trustees ability to audit PBM, entitlement to access PBM cost and service information during audit, define information.
- Requires independent auditing of mail order pharmacies owned by the PBM.
- Prohibits mail order requirement for prescription drug coverage.
- Requires PBMs to allow enrollees to obtain a multiple-month supply of any prescription drug from a community pharmacy under same terms and conditions as when purchased through a mail-order pharmacy – community pharmacy must accept same reimbursement that applies to a mail-order pharmacy.
- PBMs must reimburse pharmacies for both brand and generic drugs using reimbursement rates based on current and nationally recognized benchmark indices that include AWP and MAC.

Texas

Subject: PBM Regulation
Insurance Code Sections 843.3401 and 1301.1041 (H.B. 2292)
Effective Date: 09/01/2011

- PBMs may not use extrapolation in pharmacy audits and must provide pharmacies with reasonable notice prior to an audit.
- PBMs shall pay pharmacies the total amount of a claim submitted via e-prescribing no later than the 18th day after adjudication and shall pay pharmacies for claims not electronically submitted no later than 21 days after adjudication.

Utah

Subject: PBM Regulation 49-20-501; 49-20-502; and 49-20-503 Effective Date: 03/21/2011

- Requires the Utah State Retirement Board, when requesting for proposals for a PBM to provide pharmacy benefits management services for the Public Employee's Benefit and Insurance Program, to provide each responder with:
 - 1) The option to include among the billing options proposed
 - 2) A billing option that requires the PBM to on a monthly basis submit to the board an invoice for all pharmacy services paid by the PBM on behalf of the program. Such invoice shall detail:
 - a) The total amount due to the PBM for all pharmacy services
 - b) The total amount paid by the PBM for the same pharmacy services

Utah

Subject: Fair Pharmacy Audits 58-17b-622 Utah Code Effective Date: 05/08/2012

- An audit that involves clinical or professional judgment must be conducted or consulted by a licensed pharmacist.
- Pharmacies receiving on-site audits shall receive 10 days advance notice of audit date and prescription number and date range included in the audit.
- The audit may not occur within the first five business days of the month unless the pharmacy agrees to the timing.
- Audits may not include claims more than 18 months from the date of the audit unless required by federal law or the originating prescription is dated in the preceding six months.
- Audits may not be over 200 prescription claims.
- Dispensing fees may not be included in overpayments unless the prescription is a misfill.
- Clerical or record keeping errors, unless the audit is alleging fraud or intentional/ willful misrepresentation with reasonable evidence, are not subject to recoupment.
- Collection of funds, charge-backs, or penalties shall not be collected until the audit and appeals are final unless the entity is alleging fraud or misrepresentation.
- Auditors shall only have access to previous audit reports of a particular pharmacy conducted by that entity except as required for compliance with state or federal law.
- A pharmacy may use any electronic or physical copy of records of health care facilities or a provider with prescriptive authority, as well as prescriptions complying with state law, to validate a claim for a prescription, refill, or change in a prescription.
- Preliminary audit reports must be delivered to the pharmacy or corporate office within 60 days of completion of the audit.
- A pharmacy shall have 30 days following the receipt of the preliminary audit report to respond to questions, provide documentation, and comment findings of the audit.
- Receipts of reports shall be based on the postmark date or the date of a computer transmission if sent electronically.
- If the audit results in a dispute or denial of a claim, the entity conducting the audit shall allow the pharmacy to resubmit claims using any commercially reasonable method provided the period a claim may be resubmitted has not expired under plan sponsor rules.
- Final audit reports shall be delivered to the pharmacy no later than 120 days after completion of the appeals process. Final audit report shall include disclosure of any monies recovered by the entity conducting the audit.

- Entities conducting audits shall establish a written appeals process for preliminary and final audit reports and provide notice to the pharmacy being audited. This notice may be met by PBM inclusion of said information in the contract with a pharmacy.
- Excludes audits of pharmacy records for federally funded prescription programs, Medicare Part D program, Department of Defense prescription drug program, Veteran's Affairs prescription program or when fraud and willful misrepresentation is alleged to by the auditor with evidence to reasonably indicate so.

Vermont

Subject: PBM Regulation

18 V.S.A. Chapter 221, Sections 9421, 9471 – 9473

Effective Date: 07/01/2007

- PBM must provide notice to a health insurer that the following terms may be included in its contract with the PBM:
 - 1) all financial and utilization information requested by the insurer relating to the provision of benefits to beneficiaries through that insurer's health plan (information may be designated as confidential);
 - 2) notify the insurer of any proposed or ongoing activity that, directly or indirectly, poses a conflict of interest;
 - 3) if a substitute drug is to be dispensed which costs more than the prescribed drug and the PBM receives a payment or benefit then the cost of both drugs and the benefit or payment must be disclosed;
 - 4) if PBM derives any benefit based on volume of sales for certain drugs or classes or brands of drugs, that payment or benefit must be passed on in full to the health insurer; and
 - 5) disclose all financial terms and arrangement for remuneration of any kind that apply between the PBM and the drug manufacturer including formulary management and drug-switch programs, educational support, claims process and pharmacy network fees charged from retail pharmacies and data sales fees (information may be designated as confidential).
- PBM must register before doing business in the state.
- PBM must notify health insurers that they are entitled to a quote for an administrative-services-only (ASO) contract with full pass through of negotiated prices, rebates and other such financial benefits which would identify to the insurer external sources of revenue and profit generally available and whether the PBM offers that type of arrangement.
- In order to verify the pricing arrangements of ASO contracts, the PBM must allow access to the Commissioner to conduct an audit.
- Department's expenses in conducting the audit must be paid by the PBM.
- Applies to all contracts executive or renewed on or after September 1, 2007.

Vermont

Subject: Fair Pharmacy Audits

Act 150 (S.B. 200)

Effective Date: 07/01/2012

- Establishes rights for pharmacies when being audited by a pharmacy benefit manager or health insurer that is not Medicaid or another public health care assistance program.
- Requires an audit to be conducted by a licensed pharmacist who is familiar with Vermont pharmacy laws.
- Requires a pharmacy benefit manager to give at least 14 business day's written notice before conducting an on-site audit and to receive a list of the prescriptions being audited.
- Prohibits an audit from being performed on Mondays or weeks containing a federal holiday.
- Establishes that claims that are 18 months old or less may be audited and prohibits more than 200 prescriptions from being audited.
- Prohibits clerical or recordkeeping errors from being determined as fraudulent when there is no financial harm or evidence.
- Allows a pharmacist to use prescriptions that meet Vermont law to validate claims.

- Limits recoupment to amounts paid in excess of amounts payable under a corrected claim and prohibits recoupment and repayment from including the dispensing fee unless the prescription was not dispensed, not valid, fraudulent or outside the provisions of the contract.
- Prohibits recoupment of repayment from being demanded when information is missing in the prescription that is not required by state or federal law.
- Prohibits extrapolation from being used to calculate recoupments or penalties.
- Requires the preliminary audit report to be delivered within 60 days after the completion of the audit and 120 days for the final report to be delivered to the pharmacy after the end of the appeals period.
- Allows the pharmacy to have 30 days after receiving the preliminary report to produce documentation to address discrepancy found during the audit.

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