

## **IC 25-26-22**

### **Chapter 22. Pharmacy Audits**

#### **IC 25-26-22-1**

##### **Definitions applicable to chapter**

Sec. 1. The definitions contained in IC 25-26-13-2 apply throughout this chapter.

*As added by P.L.7-2009, SEC.1.*

#### **IC 25-26-22-2**

##### **"Audit"**

Sec. 2. As used in this chapter, "audit" means an audit of a pharmacy:

- (1) on behalf of a third party payer; and
- (2) related to a particular claim made by the pharmacy to the third party payer.

*As added by P.L.7-2009, SEC.1.*

#### **IC 25-26-22-3**

##### **"Extrapolation audit"**

Sec. 3. As used in this chapter, "extrapolation audit" means an audit of a sample of claims submitted by a pharmacy to a third party payer, the results of which are used to estimate audit results for a larger group of unaudited claims submitted by the pharmacy to the third party payer.

*As added by P.L.7-2009, SEC.1.*

#### **IC 25-26-22-4**

##### **Audit compliance**

Sec. 4. An audit must be conducted in compliance with this chapter.

*As added by P.L.7-2009, SEC.1.*

#### **IC 25-26-22-4.2**

##### **Third party payer onsite audit limitations**

Sec. 4.2. (a) A third party payer may cause an onsite audit to occur at a particular pharmacy location not more than one (1) time per calendar year.

(b) A company that conducts an audit for a third party payer may conduct an onsite audit at a particular pharmacy location not more than one (1) time per calendar year for each third party payer. However, if the audit results in a finding of a particular problem at the pharmacy, the auditor may return within the calendar year to determine ongoing compliance.

*As added by P.L.159-2012, SEC.9.*

#### **IC 25-26-22-5**

##### **Audit requirements**

Sec. 5. An auditor conducting an audit shall comply with all of the following:

- (1) The contract under which the audit is performed must provide a description of audit procedures that will be followed.
- (2) For an onsite audit conducted at a pharmacy's location, the auditor that conducts the audit shall provide written notice to the pharmacy at least two (2) weeks before the initial onsite audit is performed for each audit cycle.
- (3) The auditor shall not interfere with the delivery of pharmacist services to a patient and shall use every effort to minimize inconvenience and disruption to pharmacy operations during the audit. This subdivision does not prohibit audits during normal business hours of the pharmacy.
- (4) If the audit requires use of clinical or professional judgment, the audit must be conducted by or in consultation with a licensed pharmacist.
- (5) The auditor shall allow the use of written or otherwise transmitted hospital, physician, or other health practitioner records to validate a pharmacy record with respect to a prescription for a legend drug.
- (6) The auditor shall perform the audit according to the same standards and parameters that the auditor uses to audit all other similarly situated pharmacies on behalf of the third party payer.
- (7) The period covered by the audit must not exceed twenty-four (24) months after the date on which the claim that is the subject of the audit was submitted to or adjudicated by the third party payer, and the pharmacy must be permitted to resubmit electronically any claims disputed by the audit. This subdivision does not limit the period for audits under the Medicaid program that are conducted due to a federal requirement.
- (8) The audit must not be initiated or scheduled during the first seven (7) calendar days of any month without the voluntary consent of the pharmacy. The consent may not be mandated by a contract or any other means.
- (9) Payment to the onsite auditor for conducting the audit must not be based on a percentage of any amount recovered as a result of the audit.
- (10) Within twenty-four (24) hours of receiving the notice of an audit, a pharmacy may reschedule the audit to a date not more than fourteen (14) days after the date proposed by the auditor. However, if the auditor is unable to reschedule within the fourteen (14) day period, the auditor shall select and reschedule the audit for a date after the fourteen (14) day period.
- (11) This subdivision does not apply to an audit conducted by the Medicaid program. If a clerical error is identified by the auditor during the course of an audit, the auditor shall allow the pharmacy to obtain a prescription that corrects the clerical error from the prescribing physician. However, if the clerical error results in an overpayment to the pharmacy, the overpayment may be recouped by the third party payer.

*As added by P.L. 7-2009, SEC.1. Amended by P.L.159-2012, SEC.10.*

#### **IC 25-26-22-6**

##### **Written audit reports**

Sec. 6. (a) This section does not apply to an audit conducted by the Medicaid, Medicare, or any other federal program.

(b) Following an audit, the auditor shall provide to the pharmacy written audit reports as follows:

(1) The auditor shall deliver a preliminary audit report to the pharmacy not later than ninety (90) days after the audit is concluded.

(2) The auditor shall provide with the preliminary audit report a written appeal procedure for the pharmacy to follow if the pharmacy desires to appeal a finding contained in the preliminary audit report. The written appeal procedure must provide for a period of at least thirty (30) days after the pharmacy receives the preliminary audit report during which the pharmacy may file an appeal of findings contained in the preliminary audit report.

(3) The auditor shall deliver a final audit report to the pharmacy not later than one hundred twenty (120) days after:

(A) the preliminary audit report is received by the pharmacy;  
or

(B) if an appeal is filed, a final appeal determination is made; whichever is later.

(4) Each audit report must be signed by the auditor and a pharmacist participating in the audit.

(5) The auditor shall provide a copy of the final audit report to the third party payer.

(c) If requested by the pharmacy, the auditor shall provide the audit report under this section to the pharmacy by a means that allows signature confirmation, including an electronic signature (as defined by IC 25-26-13-2). If the audit report is sent by electronic mail, any other verification system may be used, provided that the receipt is acknowledged by the pharmacy.

*As added by P.L. 7-2009, SEC. 1. Amended by P.L. 159-2012, SEC. 11.*

#### **IC 25-26-22-7**

##### **Clerical errors; fraud; recoupment of payment**

Sec. 7. (a) A clerical error related to or contained in a document that is necessary to the conduct of an audit does not constitute fraud without proof of intent to commit fraud.

(b) A clerical error that results in inappropriate payment of a claim by the third party payer may result in recoupment of any inappropriately made payment.

*As added by P.L. 7-2009, SEC. 1.*

#### **IC 25-26-22-8**

##### **Overpayment and underpayment audit findings**

Sec. 8. An audit finding of an overpayment or underpayment of a claim:

(1) must be based on an actual overpayment or underpayment;

and

(2) may not be based on a projection that is based on the number of:

(A) patients who:

(i) have similar diagnoses; and

(ii) are served by the pharmacy; or

(B) prescriptions for or refills of similar legend drugs that are dispensed by the pharmacy.

*As added by P.L.7-2009, SEC.1.*

#### **IC 25-26-22-9**

##### **Audit report; distribution; interest accrual**

Sec. 9. (a) This section does not apply to an audit conducted by the Medicaid, Medicare, or any other federal program.

(b) Before recoupment of funds may be made based on an audit finding of overpayment or underpayment:

(1) a final audit report must be distributed; and

(2) except when an audit finds that fraud, willful misrepresentation, or alleged serious abuse has occurred, at least thirty (30) days must elapse after the date on which the final audit report is distributed before the recoupment of funds exceeding ten thousand dollars (\$10,000).

(c) Interest on funds described in subsection (b) does not accrue during the audit period.

*As added by P.L.7-2009, SEC.1. Amended by P.L.159-2012, SEC.12.*

#### **IC 25-26-22-10**

##### **Prohibition of extrapolation audits for calculating recoupments or penalties**

Sec. 10. The results of an extrapolation audit may not be used by an auditor as a basis for calculating overpayment or underpayment recoupments or penalties.

*As added by P.L.7-2009, SEC.1.*

#### **IC 25-26-22-11**

##### **Application of chapter for investigative audits**

Sec. 11. This chapter does not apply to an investigative audit conducted for purposes of determining whether fraud, willful misrepresentation, or alleged serious abuse has occurred.

*As added by P.L.7-2009, SEC.1.*