

ASSEMBLY, No. 3819

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

SYNOPSIS

Regulates audits of pharmacies.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning pharmacy audits and supplementing Title 17B
2 of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 "Drug" means a drug or device as defined in R.S.24:1-1.

9 "Entity" means a carrier, a pharmacy benefits manager, a third-
10 party payer, or an entity representing a responsible party.

11 "Pharmacy" means any place in the State where drugs are
12 dispensed or pharmaceutical care is provided by a licensed
13 pharmacist, but shall not include a medical office under the control
14 of a licensed physician.

15 "Pharmacy benefits manager" means the same as defined in
16 section 1 of P.L.2015, c.179 (C.17B:27F-1)

17 "Prescription" means the same as defined in section 5 of
18 P.L.1977, c.240 (C.24:6E-4).

19

20 2. Notwithstanding any provision of law to the contrary, if an
21 entity conducts an audit of the records of a pharmacy the entity
22 shall comply with the following:

23 a. If the audit is to be conducted on-site at a pharmacy, the
24 entity conducting the audit shall:

25 (1) give the pharmacy at least 14 days' advance written notice
26 of the audit and the specific prescriptions to be included in the
27 audit; and

28 (2) not audit a pharmacy on Mondays or on weeks containing a
29 federal holiday, unless agreed to by the pharmacy being audited;

30 b. An entity shall not audit claims that:

31 (1) were submitted to the pharmacy benefit manager more than
32 18 months prior to the date of the audit, unless:

33 (a) required by federal law; or

34 (b) the originating prescription was dated within the 18-month
35 period preceding the date of the audit; or

36 (2) exceed 100 selected prescription claims;

37 c. The entity conducting the audit shall accept valid and lawful
38 purchases from licensed wholesalers, permissible under applicable
39 federal and state laws, to determine if a pharmacy has sufficient
40 inventory to support prescriptions dispensed;

41 d. Auditors shall be permitted to enter the prescription
42 department only when accompanied by or authorized by a member
43 of the pharmacy staff authorized to be in the prescription
44 department, and auditors shall not disrupt the provision of services
45 to the pharmacy's customers;

46 e. Clerical or recordkeeping errors, including typographical
47 errors, scrivener's errors, and computer errors, on a required
48 document or record shall not be deemed fraudulent in the absence

1 of any financial harm or other evidence; provided that this
2 subsection shall not be construed to prohibit recoupment of actual
3 fraudulent payments;

4 f. The pharmacy may dispense and receive reimbursement for
5 the full quantity of the smallest commonly available commercially
6 packaged product, including eye drops, insulin, and topical
7 products, that contains the total amount required to be dispensed to
8 meet the days' supply ordered by the prescriber, even if the full
9 quantity of the commercially prepared package exceeds the
10 maximum days' supply allowed;

11 g. The pharmacy shall be permitted to determine the days'
12 supply using the highest daily total dose that may be utilized by the
13 patient pursuant to the prescriber's directions, and for prescriptions
14 with a titrated dose schedule, to use the schedule to determine the
15 days' supply;

16 h. A pharmacy shall be subject to recoupment only following
17 the correction of a claim and recoupment shall be limited to
18 amounts paid in excess of amounts payable under the corrected
19 claim;

20 i. If a written prescription order cannot be located at the time
21 of the audit, a pharmacy shall be provided sufficient time to reach
22 out to the medical provider that issued the prescription for a
23 replacement copy; and

24 j. A demand for recoupment, repayment, or offset against
25 future reimbursement for overpayment of a claim for dispensing of
26 an original or refill prescription shall not include the dispensing fee,
27 unless the prescription that is the subject of the claim was not
28 actually dispensed, was not valid, was fraudulent, or was outside
29 the provisions of the contract; provided that this subsection shall
30 not apply if a pharmacy is required to correct an error in a claim
31 submitted in good faith.

32

33 3. This act shall take effect on the 90th day next following
34 enactment.

35

36

37

STATEMENT

38

39 This bill establishes certain protections for pharmacies being
40 audited by health insurance carriers, pharmacy benefits managers,
41 or other similar entities – a “Pharmacy Audit Bill of Rights.” The
42 bill provides that whenever an entity conducts an audit of the
43 records of a pharmacy, the pharmacy shall have certain rights, as
44 follows:

- 45 • If an audit is to be conducted on-site at a pharmacy, the entity
46 conducting the audit shall:

- 1 (1) give the pharmacy at least 14 days' advance written
2 notice of the audit and the specific prescriptions to be
3 included in the audit; and
4 (2) not audit a pharmacy on Mondays or on weeks containing
5 a federal holiday, unless agreed to by the pharmacy being
6 audited;
- 7 • An entity shall not audit claims that:
 - 8 (1) were submitted to the pharmacy benefits manager
 - 9 more than 18 months prior to the date of the audit, unless:
 - 10 (a) required by federal law; or
 - 11 (b) the originating prescription was dated within the 18-
 - 12 month period preceding the date of the audit; or
 - 13 (2) exceed 100 selected prescription claims;
 - 14 • The entity conducting the audit shall accept valid and
15 lawful purchases from licensed wholesalers, permissible
16 under applicable federal and states law, to determine if a
17 pharmacy has sufficient inventory to support claims
18 dispensed.
 - 19 • Auditors shall be permitted to enter the prescription
20 department only when accompanied by or authorized by a
21 member of the pharmacy staff authorized to be in the
22 prescription department, and auditors shall not disrupt the
23 provision of services to the pharmacy's customers.
 - 24 • Clerical or recordkeeping errors, including typographical
25 errors, scrivener's errors, and computer errors, on a
26 required document or record shall not be deemed
27 fraudulent in the absence of any financial harm or other
28 evidence. This provision shall not be construed to prohibit
29 recoupment of actual fraudulent payments.
 - 30 • The pharmacy shall be permitted to dispense and receive
31 reimbursement for the full quantity of the smallest
32 commonly available commercially packaged product,
33 including eye drops, insulin, and topical products, that
34 contains the total amount required to be dispensed to meet
35 the days' supply ordered by the prescriber, even if the full
36 quantity of the commercially prepared package exceeds
37 the maximum days' supply allowed.
 - 38 • The pharmacy may determine the days' supply using the
39 highest daily total dose that may be utilized by the patient
40 pursuant to the prescriber's directions, and for
41 prescriptions with a titrated dose schedule, to use the
42 schedule to determine the days' supply.
 - 43 • A pharmacy shall be subject to recoupment only
44 following the correction of a claim and recoupment shall
45 be limited to amounts paid in excess of amounts payable
46 under the corrected claim.
 - 47 • If a written prescription order cannot be located at the
48 time of the audit, pharmacies shall be provided sufficient

1 time to reach out to the medical provider that issued the
2 prescription for a replacement copy.
3 • A demand for recoupment, repayment, or offset against
4 future reimbursement for overpayment of a claim for
5 dispensing of an original or refill prescription shall not
6 include the dispensing fee, unless the prescription that is
7 the subject of the claim was not actually dispensed, was
8 not valid, was fraudulent, or was outside the provisions of
9 the contract. This provision not apply if a pharmacy is
10 required to correct an error in a claim submitted in good
11 faith.