

SENATE, No. 3304

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED DECEMBER 21, 2020

Sponsored by:
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

SYNOPSIS

“New Jersey Pharmacy Audit Bill of Rights;” establishes procedures by which entities are required to conduct audits of pharmacies.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning pharmacy audits and supplementing P.L.1971,
2 c.144 (C.17B:34-1 et seq.).

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

6
7 1. This act shall be known and may be cited as the “New Jersey
8 Pharmacy Audit Bill of Rights.”

9
10 2. As used in this act:

11 “Entity” means a hospital service corporation, medical service
12 corporation, health service corporation, or other managed care
13 company, or an insurance company, third-party payor, pharmacy
14 benefits manager, any entity licensed by the Department of Banking
15 and Insurance, or any entity that represents those companies,
16 groups, or departments.

17
18 3. Notwithstanding any other law, rule, or regulation to the
19 contrary, when an audit of the records of a pharmacy is conducted
20 by an entity, the audit shall be conducted in accordance with the
21 following requirements:

22 a. An entity conducting an audit shall give the pharmacy notice
23 at least 14 days prior to the audit and include in the notice a
24 comprehensive list of claims by prescription number to be audited,
25 although the final two digits of each prescription number may be
26 omitted. The cost of the claims shall not be used as a criterion in
27 determining which claims to audit. The audit shall not include more
28 than 100 prescriptions per audit and an entity shall not audit more
29 than 200 prescriptions in any 12-month period, provided that a refill
30 shall not constitute a separate prescription;

31 b. Any audit that involves clinical or professional judgment
32 shall be conducted by or in consultation with a pharmacist;

33 c. Any clerical or record-keeping error, including but not
34 limited to a typographical error, scrivener’s error, computer error,
35 or omission error, regarding a prescription, front or back label, or
36 other document or record shall not in and of itself constitute fraud.
37 An entity shall not be entitled to recoup the costs of drugs or
38 medicinal supplies properly dispensed shall be allowed if a clerical
39 or record-keeping error has occurred; provided, however, that
40 recoupment shall be allowed to the extent that the error resulted in
41 an overpayment, though recoupment shall be limited to the amount
42 overpaid;

43 d. A pharmacy shall, within 60 days following receipt of the
44 preliminary audit report, correct any error or address any
45 discrepancy found during an audit which may be subject to
46 recoupment for overpayment as provided for in subsection c. of this
47 section, including to secure and remit an appropriate copy of the
48 record from a hospital, physician, or other authorized health care

1 practitioner for drugs or medicinal supplies written or transmitted
2 by any means of communication if the lack of a record or an error
3 in a record is identified in the course of an audit or in the
4 preliminary audit report;

5 e. Notwithstanding the provisions of any law, rule, or
6 regulation to the contrary, a hospital, physician, or other
7 practitioner authorized to administer drugs or medicinal supplies
8 written or transmitted by any means of communication may provide
9 relevant records to a pharmacy that is under audit pursuant to the
10 provisions of this act, for the purposes of validating the pharmacy
11 record with respect to orders or refills of a legend or narcotic drug;

12 f. A finding of an overpayment or underpayment may be a
13 projection based on the number of patients served with a similar
14 diagnosis or on the number of similar orders or refills for similar
15 drugs. The recoupment of claims shall be based on the actual
16 overpayment or underpayment unless the projection for
17 overpayment or underpayment is part of a settlement agreed to by
18 the pharmacy;

19 g. Each pharmacy shall be audited by an entity under the same
20 standards and parameters as other similarly situated pharmacies
21 audited by the entity;

22 h. An audit shall not cover a period exceeding two years from
23 the date the claim was submitted to or adjudicated by an entity;

24 i. An entity shall not initiate or schedule an audit during the
25 first seven calendar days of any month due to the high volume of
26 prescriptions filled during that time unless otherwise consented to
27 by the pharmacy;

28 j. The preliminary audit report shall be delivered to the
29 pharmacy within 30 days after conclusion of the audit. A final audit
30 report shall be delivered to the pharmacy within 60 days after
31 receipt of the preliminary audit report or final appeal, as provided
32 for in section 4 of P.L. , c. (C.) (pending before the
33 Legislature as this bill), whichever is later;

34 k. A pharmacy shall not be held responsible for any penalty or
35 fee in connection with an audit and there shall be no recoupment of
36 funds from a pharmacy in connection with claims for which the
37 pharmacy has already been paid without first complying with the
38 requirements set forth in P.L. , c. (C.) (pending before the
39 Legislature as this bill);

40 (1) There shall be no recoupment from a pharmacy except in
41 cases of:

42 (2) fraud;

43 (3) error that resulted in an overpayment provided that
44 recoupment shall be limited to the amount overpaid; or

45 (4) a misfill; provided, however, that when a patient receives the
46 correct drug in the correct dosage and quantity pursuant to a
47 prescription drug order then no misfill shall be found to have
48 occurred; and

1 l. A pharmacy shall not be audited by the same entity more
2 than once every six months.

3 m. A pharmacy benefits manager shall not prohibit a pharmacy
4 from dispensing any legal drug in any quantity.

5 Notwithstanding any other provisions in this subsection, the
6 entity conducting the audit shall not use the accounting practice of
7 extrapolation in calculating recoupments or penalties for audits.

8
9 4. Recoupments of any disputed funds shall only occur after
10 final internal disposition of the audit, including the appeals process
11 as set forth in section 4 of P.L. , c. (C.) (pending before the
12 Legislature as this bill).

13
14 5. Each entity conducting an audit shall establish an internal
15 appeals process under which a pharmacy shall have at least 30 days
16 from the delivery of the preliminary audit report to appeal an
17 unfavorable preliminary audit report to the entity. If, following the
18 appeal, the entity finds that an unfavorable audit report or any
19 portion thereof is unsubstantiated, the entity shall dismiss the audit
20 report or portion thereof without any further proceedings.

21
22 6. A plan sponsor may request, and an entity conducting an
23 audit shall provide, a copy of the final audit report, after completion
24 of any review process, to the plan sponsor at its request.

25
26 7. The provisions of P.L. , c. (C.) (pending before the
27 Legislature as this bill) shall not apply to:

28 a. any investigative audit commenced based upon an articulable
29 suspicion of fraud, willful misrepresentation, or abuse, including
30 investigative audits pursuant to section 7 of P.L.1968, c.413
31 (C.30:4D-7), section 8 of P.L.1983, c.320 (C.17:33A-8), section 71
32 of P.L.2003, c.89 (C.2C:21-4.4), or any other statutory provision
33 providing for an investigation relating to insurance fraud; or

34 b. audits conducted by the Department of Human Services
35 pursuant to section 7 of P.L.1968, c.413 (C.30:4D-7), provided,
36 however, that the provisions of chapter 49 under Title 10 of the
37 New Jersey Administrative Code shall apply to audits conducted by
38 the Department of Health under section 7 of P.L.1968, c.413
39 (C.30:4D-7).

40
41 8. An entity conducting an audit pursuant to the provisions of
42 P.L. , c. (C.) (pending before the Legislature as this bill)
43 shall not compensate the agent or employee conducting the audit
44 based on percentage of the amount recovered by the audit.

45
46 9. The Commissioner of Banking and Insurance shall adopt,
47 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
48 (C.52:14B-1 et seq.) rules and regulations to effectuate the

1 provisions of P.L. , c. (C.) (pending before the Legislature
2 as this bill). The Commissioner shall investigate complaints of
3 alleged violations of this section; to prohibit recoupment; to order
4 reimbursement of any wrongful recoupment; to institute fines for
5 violations of the law, rules, or regulations; and to take any other
6 actions pursuant to any authority granted pursuant to P.L.2015,
7 c.179 (C.17B:27F-1 et seq.), relating to the regulation and licensure
8 of pharmacy benefit managers.

9
10 10. This act shall take effect on the first day of the sixth month
11 next following enactment.

12 13 14 STATEMENT

15
16 This bill establishes the “New Jersey Pharmacy Audit Bill of
17 Rights” including certain procedures and processes by which
18 entities auditing a pharmacy are to follow. The bill defines “entity”
19 as a hospital service corporation, medical service corporation, or
20 other managed care company, or an insurance company, third-party
21 payor, pharmacy benefits manager, any entity licensed by the
22 Department of Banking and Insurance, or any entity that represents
23 such companies, groups, or departments.

24 Under the bill, the audits are to be conducted in accordance with
25 certain requirements concerning the scope of an audit, procedures to
26 properly perform an audit, record-keeping, and recoupment.
27 Additionally, the entity conducting an audit shall not use the
28 accounting practice of extrapolation in calculating recoupments or
29 penalties for audits.

30 Under the bill, recoupments of any disputed funds are to only
31 occur after final internal disposition of the audit, including the
32 appeals process as set forth in the bill. Each entity conducting an
33 audit shall establish an internal appeals process under which a
34 pharmacy shall have at least 30 days from the delivery of the
35 preliminary audit report to appeal an unfavorable preliminary audit
36 report to the entity. If, following the appeal, the entity finds that an
37 unfavorable audit report or any portion thereof is unsubstantiated,
38 the entity is to dismiss the audit report or portion thereof without
39 the necessity of any further proceedings. Each entity conducting an
40 audit is to provide a copy of the final audit report, after completion
41 of any review process, to the plan sponsor at its request or in an
42 alternate format.

43 The provisions of the bill do not apply to any investigative audit
44 commenced based upon an articulable suspicion of fraud, willful
45 misrepresentation, or abuse, including without limitation
46 investigative audits under the “New Jersey Medical Assistance and
47 Health Services Act;” the “New Jersey Insurance Fraud Prevention
48 Act;” the New Jersey criminal statute establishing insurance fraud

1 as a crime; or any other statutory provision which authorizes
2 investigations relating to insurance fraud.

3 Additionally the Department of Human Services is exempt from
4 the bill's provisions when conducting audits under the "New Jersey
5 Medical Assistance and Health Services Act," so long as the
6 regulations establishing an appeals process for Medicaid providers
7 apply to the parties under audit by the Department of Human
8 Services pursuant to the "New Jersey Medical Assistance and
9 Health Services Act."

10 Under the bill, an entity conducting the audit may not pay the
11 agent or employee who is conducting the audit based on percentage
12 of the amount recovered. Lastly, the Commissioner of Banking and
13 Insurance is assigned the enforcement of the bill's provisions and is
14 to promulgate rules and regulations to effectuate its provisions. The
15 Commissioner has the authority to investigate complaints of alleged
16 violations of this section; to prohibit recoupment; to order
17 reimbursement of any wrongful recoupment; to institute fines for
18 violations of the law, rules, or regulations; and to take any other
19 actions pursuant to any authority granted pursuant to current law
20 relating to the regulation and licensure of pharmacy benefit
21 managers.