

[Ark. Code § 17-92-1201.]

§ 17-92-1201. Arkansas Pharmacy Audit Bill of Rights: Arkansas Pharmacy Audit Bill of Rights

- (a) This subchapter shall be known and may be cited as the "Arkansas Pharmacy Audit Bill of Rights".
- (b) Notwithstanding any other law, when an audit of the records of a pharmacy is conducted by a managed-care company, an insurance company, a third-party payor, or any entity that represents responsible parties such as companies or groups, the audit shall be conducted in accordance with the following bill of rights:
- (1) The entity conducting the initial on-site audit shall give the pharmacy notice at least one (1) week before conducting the initial on-site audit for each audit cycle;
- (2) Any audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist;
- (3) (A) (i) Any clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error, regarding a required document or record shall not in and of itself constitute fraud.
(ii) However, a claim arising under subdivision (b)(3)(A)(i) of this section may be subject to recoupment.
(B) A claim arising under subdivision (b)(3)(A)(i) of this section is not subject to criminal penalties without proof of intent to commit fraud;
- (4) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug;
- (5)
(A) 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.
(B) However, recoupment of claims under subdivision (b)(5)(A) of this section shall be based on the actual overpayment unless the projection for overpayment or underpayment is part of a settlement by the pharmacy;
- (6)
(A) Where an audit is for a specifically identified problem that has been disclosed to the pharmacy, the audit shall be limited to claims that are identified by prescription number.
(B) For an audit other than described in subdivision (b)(6)(A) of this section, an audit shall be limited to twenty-five (25) prescriptions that have been randomly selected.
(C) If an audit reveals the necessity for a review of additional claims, the audit shall be conducted on site.
(D) Except for audits initiated under subdivision (b)(6)(A) of this section, an entity shall not initiate an audit of a pharmacy more than two (2) times in a calendar year;
- (7) (A) A recoupment shall not be based on:
(i) Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the Arkansas State Board of Pharmacy; or
(ii)
(a) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the Arkansas State Board of Pharmacy.
(b) This subdivision (b)(7) applies only to audits of claims submitted for payment on or after January 1, 2012.

- (B) Subdivisions (b)(7)(A)(i) and (ii) of this section do not apply in cases of United States Food and Drug Administration regulation or drug manufacturer safety programs;
- (8) Recoupment shall only occur following the correction of a claim and shall be limited to amounts paid in excess of amounts payable under the corrected claim;
- (9) Except for Medicare claims, approval of drug, prescriber, or patient eligibility upon adjudication of a claim shall not be reversed unless the pharmacy or pharmacist obtained the adjudication by fraud or misrepresentation of claim elements;
- (10) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;
- (11) A pharmacy shall be allowed at least thirty (30) days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;
- (12) The period covered by an audit shall not exceed twenty-four (24) months from the date the claim was submitted to or adjudicated by a managed-care company, an insurance company, a third-party payor, or any entity that represents such companies or groups;
- (13) Unless otherwise consented to by the pharmacy, an audit shall not be initiated or scheduled during the first seven (7) calendar days of any month due to the high volume of prescriptions filled during that time;
- (14)
- (A) The preliminary audit report shall be delivered to the pharmacy within one hundred twenty (120) days after conclusion of the audit.
- (B) A final audit report shall be delivered to the pharmacy within six (6) months after receipt of the preliminary audit report or the final appeal as provided for in subsection (c) of this section, whichever is later; and
- (15) Notwithstanding any other provision in this subsection, the agency conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.
- (c) Recoupments of any disputed funds shall only occur after final internal disposition of the audit, including the appeals process as set forth in subsection (d) of this section.
- (d)
- (1) Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity.
- (2) If, following the appeal, the entity finds that an unfavorable audit report or any portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the audit report without any further proceedings.
- (e) Each entity conducting an audit shall provide a copy of the final audit report to the plan sponsor after completion of any review process.
- (f)
- (1) The full amount of any recoupment on an audit shall be refunded to the responsible party.
- (2) Except as provided in subdivision (f)(3) of this section, a charge or assessment for an audit shall not be based, directly or indirectly, on amounts recouped.
- (3) Subdivision (f)(2) of this section does not prevent the entity conducting the audit from charging or assessing the responsible party, directly or indirectly, based on amounts recouped if both the following conditions are met:
- (A) The responsible party and the entity have a contract that explicitly states the percentage charge or assessment to the responsible party; and

- (B) A commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly on amounts recouped.
- (g) This section does not apply to any audit, review, or investigation that involves alleged fraud, willful misrepresentation, or abuse, including without limitation:
 - (1) Medicaid fraud as defined in § 5-55-111;
 - (2) Abuse or fraud as defined in § 20-77-1702; or
 - (3) Insurance fraud.