

NCPA Member Survey Results Highlight Growing Need for PBM Audit Reform

(Survey conducted 8/30/10: 106 respondents)

- **PBM Audits of Pharmacies Frequently Exceed Stated Purpose**
- **Reform Needed:** *“To the extent that an audit results in the identification of any clerical or record-keeping errors (such as typographical errors, scrivener’s error, or computer error) in a required document or record, the pharmacy or dispensing entity shall not be subject to recoupment of funds by the PBM unless—(i) the PBM can provide proof of intent to commit fraud; or (ii) such error results in actual financial harm to the PBM, a health insurance plan managed by the PBM, or a consumer. “*

PBMs typically audit pharmacies in order to detect any improper payment by the PBM on behalf of the plan or consumer and to verify that the patient received the correct medication in the appropriate dose. However, many times PBM auditors, some of whom are paid based on the number of “discrepancies” found, go beyond the basic intent of the audit (to detect fraud, waste and abuse) and instead focus on typographical or administrative errors for which they use as the basis to recoup money from the pharmacy. In most cases, if a PBM auditor does identify an administrative error, he or she will “take back” 100% of the value of the prescription—an extreme financial penalty that is out of proportion to the gravity of the offense. In most cases, money recouped from a pharmacy as the result of an audit is not returned to the plan sponsor—but is simply pocketed by the PBM. Many times, PBM audits of pharmacies-- operating under the guise of combating fraud, waste and abuse-- are simply an additional revenue stream for the PBM.

- **Reform Needed:** *“The PBM cannot require more stringent record keeping by a pharmacy or dispensing entity than is required by State or Federal law and regulation.”*

One way many PBMs “ensure” that discrepancies will be found is to establish elaborate record keeping requirements well in excess of what is required under state or federal law or other PBMs. Pharmacies typically maintain contracts with multiple PBMs. The result is a myriad of conflicting documentation requirements that can make operating a busy pharmacy and responding to patient concerns an even greater challenge.

- **Audits Serve as Additional Revenue Stream for PBMs**

- **Reform Needed:** *“The PBM (or an entity acting on behalf of the PBM) shall accept records of a hospital, physician or other authorized practitioner that are made available to such PBM or entity by the pharmacy or dispensing entity to validate pharmacy records and prescriptions with respect to confirming the validity or claims in connection with prescriptions, refills, or changes in prescriptions.”*

Pharmacists also report that many times auditors will zero in on auditing high dollar prescriptions— or those in which they can question the professional judgment of the individual pharmacist. One pharmacist reported that he gets audited very frequently based on the fact that he serves a large number of HIV patients -- typically prescribed very expensive medications. Pharmacists also report that auditors frequently question the directions for use that the pharmacist typically types onto the medication. Many physicians will include “take as directed” on the prescription that they issue to a patient and the pharmacist is therefore charged with providing the appropriate instructions. Auditors frequently question whether or not the directions are specific enough. One particularly egregious example of this occurs when auditors question the adequacy of instructions included on a Z-Pak. A Z-Pak is a pre-packaged dosage form that simply requires the patient to “punch out” one pill per day from the blister packaging.

- **Auditors Frequently Question Professional Judgment of the Pharmacist**

- **Reform Needed:** *“To the extent that the audit requires the application of clinical or professional judgment, such audit shall be conducted by or in consultation with a pharmacist who is licensed in the State in which the audit is being conducted.”*

Many times a physician will issue a prescription that directs the pharmacist to dispense a certain number days supply of a medication. There are times when this is open to interpretation—particularly with respect to lotions, creams or particularly eye drops. Another area that is of concern is also dispensing a certain number of days supply of insulin. Depending on blood sugar levels, the amount of insulin that a patient needs on any particular day can vary.

Pharmacists frequently report that many times elderly patients need an additional quantity of eye drops that somewhat exceeds that which may be necessary for other patients. Many elderly patients have difficulty instilling just one or two drops or due to hand tremors, and typically end up spilling a fair quantity of the product. Auditors typically do not accept these types of explanations which boil down to questioning the professional judgment of the

pharmacist. In response, many pharmacists have had to stop dispensing larger sized ophthalmic solutions.

- **Many Auditors Use Questionable Statistical Methods to Assess Fines**

- **Reform Needed:** *“The PBM (or an entity acting on behalf of the PBM) shall not use extrapolation or other statistical expansion techniques in calculating the amount of any recoupment or penalty resulting from an audit or dispensing entity.”*

Sometimes auditors will use extrapolation or other statistical expansion techniques to calculate the amount of any audit recoupment. A few prescriptions are extracted from the total number of prescriptions filled for the particular PBM—and those are examined for any errors. The number of errors detected in the small sample is then extrapolated across the entire pool of prescriptions to arrive at a questionably inflated number of discrepancies and corresponding penalties. One pharmacist recounted an example of the use of this technique in connection to a recent Medicaid audit. After the auditor complimented the pharmacist on his “clean documentation” for the audit sample she presented him with an audit findings report that detailed over \$137,000 in extrapolated clerical errors based on findings from two prescription claims. Ultimately, pharmacist was able to prove that the auditor made a mistake on one of the two claims, and the recoupment amount was then reduced to \$3,000. Extrapolation has been widely criticized as an auditing technique and a number of states have passed legislation to prohibit its use. In spite of this fact, a recently NCPA survey of member pharmacists reports that approximately 70% of private third party PBM auditors currently use extrapolation.

- **Pharmacists Frequently Have No Forum to Address Unfair Audit Penalties**

- **Reform Needed:** *“The PBM (or entity acting on behalf of the PBM) shall establish a written appeals process that shall include procedures to allow pharmacies and other dispensing entities to appeal to the PBM the preliminary reports and final reports resulting from the audit and any resulting recoupment or penalty.”*

Pharmacists when faced with significant recoupments that they believe are in error are frequently without recourse. Even if the PBM does have an appeals process, the PBM still may withhold funds without waiting for the appeals process to be completed. In addition, PBMs are

not required to resolve appeals in a timely manner and many pharmacists fear that if they complain too much, the PBM may simply drop their contract. Many pharmacists when faced with unfair audit recoupments are forced to weigh the amount of the threatened recoupment with the likely cost of hiring legal counsel. Some pharmacists are reporting a recent trend in which PBMs are keeping recoupments to just under a certain dollar amount in recognition of the fact that the threatened dollar loss to the pharmacist will not outweigh the cost of hiring an attorney.