

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 38.2-3407.15:1 of the Code of Virginia, relating to carrier contracts*  
3 *with pharmacy providers; limitations on audits of pharmacy records.*

4 [H 2561]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 38.2-3407.15:1 of the Code of Virginia is amended and reenacted as follows:**8 **§ 38.2-3407.15:1. Carrier contracts with pharmacy providers; required provisions; limit on**  
9 **termination or nonrenewal.**

10 A. As used in this section, unless the context requires a different meaning:

11 "Audit" includes any audit conducted or authorized by a carrier or its intermediary to determine  
12 whether the participating pharmacy provider has complied with the terms and conditions for  
13 reimbursement under the provider contract.

14 "Carrier" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

15 "Clerical error" means any clerical or recordkeeping error or omission, such as typographical errors,  
16 scrivener's errors, or computer errors, in the keeping, recording, handling, or transcribing of pharmacy  
17 records. "Clerical error" does not include any clerical or recordkeeping error or omission that results in  
18 an overpayment by a carrier or its intermediary or the dispensing of a prescription in breach of  
19 applicable law or regulation.20 "Fraud" means a knowingly or willfully false act of misrepresentation or an act in deliberate  
21 ignorance of the truth or falsity of the information as evidenced by a review of claims data, evaluation  
22 of provider statements, physical review of pharmacy records, or use of similar investigative methods by  
23 the carrier or its intermediary.24 *"Onsite audit" means an audit conducted at the physical location of the pharmacy, the physical*  
25 *location of its corporate offices, or the physical location of its records.*26 "Overpayment" means a payment by the carrier or its intermediary to the pharmacy provider that is  
27 greater than the rate or amount the provider is entitled to under the provider contract or applicable fee  
28 schedule.29 "Pharmacy record" means a patient record, signature or delivery log, or prescription, including  
30 written, phoned-in, faxed, or electronic prescriptions, whether original or substitute, that complies with  
31 applicable law and regulation.

32 "Provider contract" has the same meaning ascribed thereto in subsection A of § 38.2-3407.15.

33 B. Any contract between a carrier and its intermediary, pursuant to which the intermediary has the  
34 right or obligation to conduct audits of participating pharmacy providers, and any provider contract  
35 between a carrier and a participating pharmacy provider or its contracting agent, pursuant to which the  
36 carrier has the right or obligation to conduct audits of participating pharmacy providers, shall contain  
37 specific provisions that prohibit the carrier or intermediary, in the absence of fraud, from recouping  
38 amounts calculated from or arising out of any of the following:39 1. Probability sampling, extrapolation, or other mathematical or statistical methods that allegedly  
40 project an error;

41 2. Clerical errors by the participating pharmacy provider;

42 3. An act or omission of the participating pharmacy provider that was not specifically prohibited or  
43 required by the provider contract when the claim was adjudicated unless the act or omission was a  
44 violation of applicable law or regulation;45 4. The refusal of a carrier or its intermediary to consider during an audit or audit appeal a pharmacy  
46 record in electronic form to validate a claim;47 5. Dispensing fees or interest on the claim, except in the event of an overpayment, if the prescription  
48 was dispensed in accordance with applicable law or regulation;49 6. Any claim authorized and dispensed more than 24 months prior to the date of the audit unless the  
50 claim is adjusted at the direction of the Commission, except that this time period shall be tolled while  
51 the denial of the claim is being appealed;52 7. An alleged breach of auditing requirements if they are not the same as the requirements that the  
53 carrier or intermediary applies to other participating pharmacy providers in the same setting;54 8. The refusal of the carrier or its intermediary to consider during an audit or audit appeal a  
55 pharmacy record, a prescriber or patient verification, or a prescriber record to validate a claim; or

56 9. The alleged failure of the participating pharmacy provider to supply during an audit or audit

57 appeal a pharmacy record not specifically identified in the provider contract.

58 C. Any (i) contract between a carrier and its intermediary pursuant to which the intermediary has  
 59 the right or obligation to conduct audits of participating pharmacy providers and (ii) provider contract  
 60 between a carrier and a participating pharmacy provider or its contracting agent pursuant to which the  
 61 carrier has the right or obligation to conduct audits of participating pharmacy providers, shall contain  
 62 the following terms and provisions relating to audits, which shall apply in the absence of fraud:

63 1. The initial onsite audit shall give the pharmacy written notice at least 14 days before conducting  
 64 the initial audit for each audit cycle and shall disclose the specific prescription numbers to be included  
 65 in the audit. The carrier or intermediary may mask the last two digits of such numbers. A pharmacy  
 66 shall have at least 72 hours after receiving the written notice of an onsite audit to request a five  
 67 business-day extension of the proposed audit date. A pharmacy making such a request shall be granted  
 68 at least five additional business days and shall cooperate with the auditor to establish an alternative  
 69 date.

70 2. Unless otherwise consented to by the pharmacy, an onsite audit shall not be initiated or scheduled  
 71 during the first five calendar days of any month, or on a Monday and shall not involve the auditing of  
 72 more than one location of the pharmacy at any particular time.

73 3. No onsite audit of a particular pharmacy location on behalf of a particular carrier shall occur  
 74 more than once in a 12-month period.

75 4. Each pharmacy shall be audited under the same standards and parameters as every other  
 76 similarly situated pharmacy. Any documentation and records required by an auditor during an audit  
 77 shall be of the same type as the documentation and records required for all other similarly situated  
 78 pharmacies.

79 5. Any audit issues that involve clinical or professional judgment shall be conducted by a pharmacist  
 80 who has available for consultation a pharmacist licensed by the Commonwealth.

81 6. Each audit shall be conducted by a field agent who possesses the requisite knowledge and  
 82 experience in pharmacy practice.

83 7. Audits shall be conducted in the Commonwealth in compliance with federal and state laws, rules  
 84 and regulations, including regulations adopted by the Board of Pharmacy.

85 8. Prescriptions shall be considered valid prescriptions if they are compliant with the then-current  
 86 Board of Pharmacy rules and regulations and have been successfully adjudicated upon a clean claim  
 87 submission. Carrier restrictions shall be addressed during the claims adjudication process either  
 88 through the rejection of the clean claim or a rejection of the clean claim with direction to obtain a  
 89 prior authorization and shall not be the basis for a retrospective recoupment of a paid claim.

90 9. Electronic records, including electronic beneficiary signature logs, electronic tracking of  
 91 prescriptions, electronic prescriber prescription transmissions and imagery of hard copy prescriptions,  
 92 electronically scanned store and patient records maintained at or accessible to the offices of an audited  
 93 pharmacy's central operations, and any other reasonably clear and accurate electronic documentation  
 94 shall be acceptable for auditing under the same terms, conditions, and validation and for the same  
 95 purposes as their paper analogs. Point of sale electronic register data shall qualify as proof of delivery  
 96 to the patient, provided that the auditor can validate the receipt on the basis of the patient data  
 97 included.

98 10. A pharmacy may use the historical records of a hospital, physician, or other authorized  
 99 practitioner of the healing arts for drugs or medicinal supplies written and transmitted by any  
 100 documented means of communication for purposes of validating the pharmacy record with respect to  
 101 orders or refills of a legend or narcotic drug.

102 11. Validation and documentation at the time of dispensing of appropriate days' supply and drug  
 103 dosing shall be based on manufacturer guidelines and definitions or, in the case of topical products or  
 104 titrated products, based on the professional judgment of the pharmacist in communication with the  
 105 patient or prescriber.

106 12. A pharmacy's usual and customary price for compounded medications is considered the  
 107 reimbursable cost unless the pricing methodology is published in the provider contract and signed by  
 108 both parties or their agents.

109 13. A carrier or its intermediary shall not make charge backs or seek recoupment from a pharmacy,  
 110 or assess or collect penalties from a pharmacy, until the time period for filing an appeal to an initial  
 111 audit report has passed or until the appeals process has been exhausted, whichever is later. If the  
 112 identified discrepancy for a single audit exceeds \$25,000, future payments in excess of that amount may  
 113 be withheld pending adjudication of an appeal.

114 14. The preliminary audit report shall (i) be delivered to the pharmacy or its pharmacy corporate  
 115 office within 60 calendar days, with reasonable extensions allowed, after conclusion of the audit and (ii)  
 116 contain claim level information for any discrepancy found and total dollar amount of claims subject to  
 117 recovery.

118 15. A pharmacy shall be allowed at least 60 calendar days following receipt of the preliminary audit  
119 report in which to produce documentation to address any discrepancy found during an audit or to file  
120 an appeal.

121 16. A final audit report containing claim level information for any discrepancy found and total dollar  
122 amount of claims subject to recovery shall be delivered to the pharmacy or its pharmacy corporate  
123 office (i) within 90 calendar days after the audited pharmacy's receipt of the preliminary audit report, if  
124 the audited pharmacy does not file an appeal or offers no documentation to address a discrepancy  
125 found during an audit, or (ii) within 60 calendar days after the auditing entity receives the audited  
126 pharmacy's appeal or documentation to address a discrepancy.

127 17. A carrier or its intermediary shall not recover from the pharmacy payment of claims that is  
128 identified through the audit process to be the responsibility of another payer.

129 18. No recoupment of amounts paid to a pharmacy for any claim shall be made solely on the basis  
130 of a prescriber's or patient's lack of response to a request made by a carrier or its intermediary.

131 19. A carrier or its intermediary shall issue its initial audit findings in conformity with the laws of  
132 the Commonwealth.

133 20. A carrier or its intermediary shall not retroactively deny a claim (i) more than one year after the  
134 date of payment of the claim if the reason for denial would be patient ineligibility or (ii) at any time if  
135 the carrier or its intermediary verified the patient's eligibility at the time of dispensing and provided an  
136 authentication number to the pharmacy.

137 D. Any contract between a carrier and its intermediary, pursuant to which the intermediary has the  
138 right or obligation to conduct audits of participating pharmacy providers, and any provider contract  
139 between a carrier and a participating pharmacy provider or its contracting agent, pursuant to which the  
140 carrier has the right or obligation to conduct audits of participating pharmacy providers, shall contain  
141 specific provisions that prohibit the carrier or intermediary, in the absence of fraud by the participating  
142 pharmacy provider, from terminating or failing to renew the contractual relationship with a participating  
143 pharmacy provider for invoking its rights under any contractual provision required to be contained in the  
144 contract pursuant to subsection B or C.

145 ~~D.~~ E. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of  
146 this section.

147 ~~E.~~ F. This section shall apply with respect to contracts described in subsection B or ~~E~~ D entered  
148 into, amended, extended, or renewed on or after January 1, 2015, *except that the provisions of*  
149 *subsection C shall apply with respect to contracts described in subsection B or D entered into,*  
150 *amended, extended, or renewed on or after January 1, 2020.*