

**§ 58-50-410. Pharmacy audit recoupments.**

(a) The auditing entity shall not recoup any disputed funds, charges, or other penalties from a pharmacy until (i) the deadline for initiating the appeals process established in accordance with this Part has elapsed or (ii) after the final internal disposition of an audit, including the required appeals process, whichever is later, unless fraud or misrepresentation is reasonably suspected.

(b) Recoupment on an audit shall be refunded to the responsible party as contractually agreed upon by the parties.

(c) The entity conducting the audit may charge or assess the responsible party, directly or indirectly, based on amounts recouped if both of the following conditions are met:

(1) The responsible party and the entity conducting the audit have entered into a contract that explicitly states the percentage charge or assessment to the responsible party.

(2) 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.

(d) The accounting practice of extrapolation shall not be used in calculating recoupments or penalties for pharmacy audits, unless otherwise required by federal requirements or federal plans.

(e) Except for cases of Food and Drug Administration regulation or drug manufacturer safety programs, and unless defined within the billing requirements set forth in a pharmacy's provider manual that are not inconsistent with the current rules adopted by the North Carolina Board of Pharmacy, an auditing entity shall not subject a pharmacy to recoupments based on any of the following:

(1) Documentation requirements in addition to or that exceed the requirements set by the North Carolina Board of Pharmacy for creating or maintaining documentation.

(2) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or that exceeds the professional duties prescribed by the North Carolina Board of Pharmacy or required under Article 4A of Chapter 90 of the General Statutes.

(f) A pharmacy shall be subject to recoupment only following the correction of a claim. Recoupment is limited to amounts paid in excess of amounts payable under the corrected claim.

(g) An auditing entity shall not subject a pharmacy to recoupment on any portion of the reimbursement for the dispensed product of a prescription, unless one of the following applies:

(1) There is fraud or other intentional and willful misrepresentation evidenced by a review of the claims data, statements, physical review, or other investigative methods.

(2) A prescription was dispensed in excess of the benefit design, as established by the plan sponsor.

(3) A prescription was not filled in accordance with the prescriber's order.

(4) There was an overpayment to the pharmacy.

(h) Recoupment of claims under subsection (g) of this section shall be based on the actual financial harm to the entity or the actual underpayment or overpayment. Calculations of overpayments shall not include dispensing fees unless one or more of the following applies:

(1) A prescription was not actually dispensed.

(2) The prescriber denied authorization.

(3) The prescription dispensed was a medication error by the pharmacy.

(4) The identified overpayment is based solely on an extra dispensing fee.

(5) The pharmacy was noncompliant with Risk Evaluation and Mitigation Strategies (REMS) program guidelines.

- (6) There was insufficient documentation, including electronically stored information, that did not meet the standards set by the North Carolina Board of Pharmacy.
- (7) There is evidence of fraud or other intentional and willful misrepresentation by the pharmacy.

(i) Any projection of an overpayment or underpayment by an auditing entity shall be based on either the number of patients served with a similar diagnosis or the number of similar prescription orders or refills for similar drugs. This subsection does not prohibit recoupments of actual overpayments, unless the projection for overpayment or underpayment is part of a settlement by the pharmacy.

(j) Prior to any recoupment, the auditing entity shall provide the pharmacy with a summary describing the total recoupment amount and the approximate date, within a seven-day window, on which the recoupment will occur. This summary shall be accompanied by payment summaries or electronic remittance advices documenting any disputed funds, charges, or other penalties. (Recodified from N.C. Gen. Stat. 90-85-50(b)(6), (11), (12), (20), and (21) and 90-85.52 by 2025-69, ss. 5.1(a), (b), 5.2(a).)