



OFFICE OF INSPECTOR GENERAL

TEXAS HEALTH & HUMAN SERVICES COMMISSION

HHSC Inspector General Audit Protocols Texas Medicaid Fee-for-Service Vendor Drug Program Audits As of January 4, 2018

These pharmacy audit protocols offer insight to Medicaid pharmacy providers about HHSC Inspector General (IG) audits, and communicate criteria IG auditors use during their audits. When Vendor Drug Program (VDP) providers follow the criteria included in the protocols, they will improve the likelihood they will be in compliance with Texas Medicaid requirements. This document describes some of the common tests the IG Audit Division performs during pharmacy audits, and include one or more of the regulatory criteria IG audit staff use when performing VDP audits.

The IG's objectives when performing VDP audits are to determine whether Medicaid Vendor Drug Program providers complied with Texas Medicaid requirements when dispensing pharmaceuticals and when billing Medicaid claims. IG audit staff use the requirements contained in Texas Administrative Code, statutes, provider manuals, contracts, and other criteria incorporated by reference into these materials. Typically, the scope of a VDP audit focuses on claims that are between two and five years old. The rules and other criteria used in the audit are determined by the dates of the audited prescriptions and billings.

IG audit staff take into account considerations unique to the pharmacy industry and to individual businesses when determining provider compliance, and will carefully evaluate and consider provider responses to preliminary audit findings. The IG will keep providers informed and will request provider input throughout the audit process. The IG encourages pharmacies to be clear and detailed when communicating questions to IG audit staff and when offering information or responses to preliminary audit findings.

This document does not include all of the current requirements for payment of Medicaid claims for a particular category of service or provider type; and therefore, is not a substitute for a review of the statutory law, regulatory requirement, and Medicaid policy. Individual audit findings will be the result of careful consideration of the facts and circumstances in each case, and this guidance may not be relied on to create a substantive or procedural right or benefit enforceable, at law or in equity, by any person. Nothing in the audit protocols are intended to alter any statutory, regulatory, or policy requirement, and the enumerated protocols are not intended to describe all possible audit findings or limit the IG's authority to make additional findings. In the event of a conflict between statements in the protocols

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and either statutory or regulatory requirements, the requirements of the statutes, regulations and policy govern.

Audit protocols may be changed as necessary. Reasons for their change may include, but are not limited to, responding to a hearing decision, litigation decision, provider feedback, statutory, or regulatory change.

1.	Missing Prescription
Criteria	Payment for pharmaceuticals can be made only when pharmaceuticals are prescribed by a practitioner licensed to prescribe legend drugs. The pharmacist must ensure that the original prescription conforms to the Texas State Board of Pharmacy rules concerning the records to be maintained by a pharmacy. A signed prescription must be maintained in the dispenser's file and available for audit at any reasonable time.
Agency Rule	<i>See, for example, "Prescription Requirements," Texas Administrative Code, Title 1 Rule 354.1863(a) and (b) (Sep. 23, 2008)</i> <i>See, for example, "Records" Texas Administrative Code, Title 22 Rule 291.34 (Nov. 24, 2011)</i>

2.	Expired Prescription
Criteria	The total amount of prescriptions authorized must be dispensed within one year of the original prescription.
Agency Rule	<i>See, for example "Refills," Texas Administrative Code, Title 1 Rule 354.1867 (June 9, 2010)</i>

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3.	Unauthorized Drug Substitution or Billing for Non-Covered Drug
Criteria	Only those drugs listed in the latest edition of the Texas Drug Code Index (TDCI) are covered by the program and are payable. Substitution is allowable only if and when authorized by the prescribing physician. When generic equivalents are dispensed, the estimated cost of the drug used should be claimed. Substitution authorization must be completely documented on the prescription. A dispensing pharmacist shall be responsible for and ensure that the drug is dispensed and delivered safely and accurately as prescribed. Dispensing a drug accurately as prescribed means dispensing a drug with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner.
Agency Rule	<p><i>See, for example, "Covered Drugs," Texas Administrative Code, Title 1 Rule 354.1831(a) (Aug. 1, 2012) ` "Substitution of One Drug for Another in a Prescription," Texas Administrative Code, Title 1 Rule 354.1851(a), (b) and (c) (May 24, 2002)</i></p> <p><i>See, for example, "Personnel," Texas Administrative Code, Title 22 Rule 291.32(c)(1)(F) (March 26, 2014)</i></p> <p><i>See, for example, "Definitions," Texas Administrative Code Rule 291.31(1) (Dec. 7, 2014)</i></p>

4.	Invalid Claim (Prescription Does Not Support Claim)
Criteria	Payment for pharmaceuticals can be made only when these pharmaceuticals are prescribed by a practitioner licensed to prescribe legend drugs. The pharmacist must ensure that the original prescription conforms to the Texas State Board of Pharmacy rules concerning the records to be maintained by a pharmacy. A signed prescription must be maintained in the dispenser's file and available for audit at any reasonable time. Telephone orders, where legal, must be documented in writing. The name of the prescriber and the signature of the dispensing pharmacist must be documented.
Agency Rule	<p><i>See, for example, "Prescription Requirements" Texas Administrative Code, Title 1 Rule 354.1863(a) and (b) (Sep. 23, 2008)</i></p> <p><i>See, for example, "Records," Texas Administrative Code, Title 22 Rule 291.34 (Sept. 11, 2014)</i></p>

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5.	Incorrect Prescriber's Identification Number on Claim
Criteria	Vendors must enter the identification number of the prescriber, as listed with the appropriate medical specialty board, on each claim.
Agency Rule	<i>See, for example,</i> "Prescriber Identification Number, " Texas Administrative Code, Title 1, Part 15, Chapter 354 Rule 354.1835 (May 24, 2002)

6.	Incorrect Package Size
Criteria	For the original dispensing and each subsequent refill, the provider indicates on the corresponding pharmacy claim submitted to the Commission the usual and customary price, the purchasing method, and the National Drug Code (NDC.)
Agency Rule	<i>See, for example,</i> "Pharmacy Claims," Texas Administrative Code, Title 1 Rule 354.1901(a) (Jan. 14, 2013)

7.	Incorrect National Drug Code (NDC)
Criteria	For the original dispensing and each subsequent refill, the provider indicates on the corresponding pharmacy claim submitted to the Commission the usual and customary price, the purchasing method, and the National Drug Code (NDC).
Agency Rule	<i>See, for example</i> "Pharmacy Claims" Texas Administrative Code, Title 1 Rule 354.1901(a) (Jan. 14, 2013)

8.	Cost Basis Error
Criteria	Legend drug reimbursement. A pharmaceutical provider is reimbursed for legend drugs based on the lesser of the Commission's best estimate of acquisition cost (EAC) plus HHSC's currently established dispensing fee per prescription, the usual and customary price charged the general public; or the Gross Amount Due, if provided. Nonlegend drug reimbursement. Reimbursement for nonlegend drugs is based on the lesser of the usual and customary price charged to the general public; EAC, plus 50 percent of the EAC; or Gross Amount Due, if provided.
Agency Rule	<i>See, for example,</i> "Legend and Nonlegend Medications," Texas Administrative Code, Title 1 Rule 355.8541 (January 14, 2013)

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9.	Prescription written for recipient other than recipient billed for
Criteria	Under the Vendor Drug Program, pharmacy services include the dispensing to eligible recipients of covered legend and nonlegend drugs. Eligible individuals present the medical care identification card to the vendor each time a prescription is filled. To receive payment from the Health and Human Services Commission, the provider must submit a pharmacy claim through the electronic adjudication system. If all necessary information is not supplied, a claim will not be paid.
Agency Rule	<p><i>See, for example, "Pharmacy Services," Texas Administrative Code, Title 1 Rule 354.1833 (June 19, 2003)</i></p> <p><i>See, for example, "Evidence of Eligibility," Texas Administrative Code, Title 1 Rule 354.1837 (June 19, 2003)</i></p> <p><i>See, for example, "Pharmacy Claims," Texas Administrative Code, Title 1 Rule 354.1901(a) and (c) (Jan. 14, 2013)</i></p>

10.	Overbilling Based on Quantity
Criteria	Providers must dispense the quantity prescribed or ordered by the prescriber except as limited by the policies and procedures described in the Commission's pharmacy provider procedure manual. Where the actual quantity dispensed deviates from the prescribed quantity, the provider must bill for the amount actually dispensed. The quantity of drugs must be entered in the metric decimal quantity field. The quantity shown as the metric decimal quantity unit must be calculated after referencing the pricing unit shown in the Texas Drug Code Index. Except for medications that may be too unstable to be dispensed as a one-month supply, the Health and Human Services Commission requires that the same drug in the same strength be dispensed no more than once per month. The dispensing of authorized refills must be consistent with the prescribed dosage schedule and existing federal and state laws.
Agency Rule	<p><i>See, for example, "Pharmacy Claims," Texas Administrative Code, Title 1 Rule 354.1901(b) (Jan. 14, 2013)</i></p> <p><i>See, for example, "Quantity Limitations," Texas Administrative Code, Title 1 Rule 354.1877(b) (May 1, 2012)</i></p> <p><i>See, for example, "Claim Adjustments," Texas Administrative Code, Title 1 Rule 354.1905 (June 19, 2003)</i></p>

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11.	Dispensing More than Ordered
Criteria	Providers must dispense the quantity prescribed or ordered by the prescriber except as limited by the policies and procedures described in the Commission's pharmacy provider procedure manual. Where the actual quantity dispensed deviates from the prescribed quantity, the provider must bill for the amount actually dispensed. The quantity of drugs must be entered in the metric decimal quantity field. The quantity shown as the metric decimal quantity unit must be calculated after referencing the pricing unit shown in the Texas Drug Code Index.
Agency Rule	<i>See, for example, "Pharmacy Claims,"</i> Texas Administrative Code, Title 1 Rule 354.1901(b) (Jan. 14, 2013)

12.	Unauthorized Quantity Decrease/Short Count
Criteria	Providers must dispense the quantity prescribed or ordered by the prescriber except as limited by the policies and procedures described in the Commission's pharmacy procedure manual. Where the actual quantity dispensed deviates from the prescribed quantity, the provider must bill for the amount actually dispensed. The quantity of drugs must be entered in the metric decimal quantity field.
Agency Rule	<i>See for example, "Pharmacy Claims"</i> Texas Administrative Code, Title 1 Rule 354.1901(b) (Jan. 14, 2013)

13.	Unauthorized Refill
Criteria	Providers must dispense the quantity prescribed or ordered by the prescriber except as limited by the policies and procedures described in the Commission's pharmacy provider procedure manual. In the absence of specific refill instructions, the prescription must be interpreted as not refillable. Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized for accelerated refills. If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented.
Agency Rule	<i>See, for example, "Pharmacy Claims"</i> Texas Administrative Code, Title 1 Rule 354.1901(b) (Jan. 14, 2013)

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	<p><i>See, for example, "Refills," Texas Administrative Code, Title 1 Rule 354.1867 (June 9, 2012)</i></p> <p><i>See, for example, "Records," Texas Administrative Code, Title 22 Rule 291.34(b)(8)(A)(i) and (ii) (Sept. 11, 2014)</i></p>
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14.	Excess Refill
Criteria	<p>Providers must dispense the quantity prescribed or ordered by the prescriber except as limited by the policies and procedures described in the Commission's pharmacy provider procedure manual. In the absence of specific refill instructions, the prescription must be interpreted as not refillable. Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized for accelerated refills. If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented.</p>
Agency Rule	<p><i>See, for example, "Pharmacy Claims," Texas Administrative Code, Title 1 Rule 354.1901(b) (Jan. 14, 2013)</i></p> <p><i>See, for example, "Refills," Texas Administrative Code, Title 1 Rule 354.1867 (June 9, 2012)</i></p> <p><i>See, for example, "Records," Texas Administrative Code, Title 22 Rule 291.34(b)(8)(A)(i) and (ii) (Sept. 11, 2014)</i></p>

15.	Excess Days' Supply (Refill Too Soon)
Criteria	<p>To be reimbursed by the Vendor Drug Program, a refill must be dispensed only after 75 percent of a previous dispensing of the same prescription would have been used if taken according to the accompanying prescriber's orders. A higher percentage limit may be required for a drug that has been determined to be subject to abuse or overuse.</p>
Agency Rule	<p><i>See, for example, "Quantity Limitations," Texas Administrative Code, Title 1 Rule 354.1877(b)(1) (May 1, 2012)</i></p>

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16.	Refill Not Supported by Documentation
Criteria	For pharmacies maintaining manual records, each time a prescription drug order is refilled, a record of such refill shall be made. For pharmacies maintaining records in a data processing system, each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system. The data processing system shall have the capacity to produce a daily hard copy printout of all original prescriptions dispensed and refilled.
Agency Rule	<i>See, for example, "Records," Texas Administrative Code, Title 22 Rule 291.34(d)(2)(A) and (e)(2)(A) and (e)(2)(C) (Sept. 11, 2014)</i> <i>See for example, "Prescription Requirements" Texas Administrative Code, Title 1 Rule 354.1863(b) (Sept. 23, 2008)</i>

17.	Schedule II Controlled Substance, Expired Prescription
Criteria	Upon receipt of a properly completed prescription form, a dispensing pharmacist must, if the prescription is for a Schedule II controlled substance, ensure the date the prescription is presented is not later than 21 days after the date of issuance.
Agency Rule	<i>See, for example, "Pharmacy Responsibility- Generally," Texas Administrative Code, Title 37 Rule 13.74 (a)(1) and (b)(1) (May 9, 2013)</i>

18.	Invalid Controlled Substance Prescription
Criteria	Prescription drug orders for Schedule II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075.
Agency Rule	<i>See, for example, "Records," Texas Administrative Code, Title 22 Rule 291.34(b)(2)(A)(ii) (Sept 11, 2014)</i>

19.	Missing Invoice for Chain Pharmacies only (Non-Warehouse Billing)
Criteria	If a claim is submitted at other than warehouse and the direct invoice is not provided, the difference in the price paid by Medicaid and what would have been paid as the warehouse price will be disallowed.
Agency Rule	Texas Administrative Code, Title 1 Rule 355.8541