

LAWS OF DELAWARE  
VOLUME 85  
CHAPTER 201  
153rd GENERAL ASSEMBLY  
FORMERLY  
HOUSE SUBSTITUTE NO. 1  
FOR  
HOUSE BILL NO. 212

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO OVERPAYMENT RECOVERY AND AUDIT PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2730, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2730. Collection of overpayments by health insurers and health plans.

(c) A health insurer or health plan ~~shall~~may not initiate overpayment recovery efforts more than ~~24~~12 months after the original payment for the claim was made. For purposes of this subsection, overpayment recovery efforts are "initiated" when a health insurer or health plan first identifies an error in the original payment for the claim through an initial audit report or similar communication delivered to the health-care provider. No such time limit ~~shall apply~~applies to overpayment recovery efforts ~~which are:~~ are any of the following:

(1) Based on ~~a reasonable belief of fraud, abuse, or other intentional misconduct;~~misconduct as indicated by physical review or review of claims data or statements.

(2) Required by, or initiated at the request of, a self-insured ~~plan;~~or plan.

(3) Required by a state or federal government plan.

(h) A finding of overpayment must be based on the actual overpayment and not 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.

(i) The entity conducting the audit may not use extrapolation in calculating the recoupment or penalties for audits unless required by state or federal law or regulations.

Section 2. Amend § 3305A, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3305A. Requirements for recoupment or chargeback [For application of this section, see 80 Del. Laws, c. 245, §? 2].

For recoupment or chargeback, the following criteria apply:

(9) Whenever it engages in recoupment or chargeback efforts, a PBM must provide written notice to the pharmacy that identifies the error made in the processing or payment of the claim and justifies the recoupment or chargeback efforts.

Section 3. Amend § 3310A, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3310A. Applicability of other laws and regulations [For application of this section, see 80 Del. Laws, c. 245, § 2].

~~This subchapter does not apply to any investigative audit that involves suspected fraud, wilful misrepresentation, abuse, or any audit completed by the State.~~ The provisions of this subchapter do not apply to an investigative audit of pharmacy records when any of the following apply:

(1) Fraud, waste, abuse, or other intentional misconduct is indicated by physical review or review of claims data or statements.

(2) Other investigative methods indicate a pharmacy is or has been engaged in criminal wrongdoing, fraud, or other intentional or wilful misrepresentation.

(3) The audit is being conducted by the State.

Approved September 3, 2025